Public Utilities

FORTNIGHTLY

August 2, 1945

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

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Public Utilities Fortnightly

VOLUME XXXVI *August 2, 1945* NUMBER 3

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

AFTER reading the opening article on population trends in this issue, we entertain a thought which is, no doubt, antisocial and, perhaps, the height of economic heresy—from the viewpoint of many of our good friends. We were thinking about that year, toward the end of the 1970's, when our national population, according to advance estimates, will begin to show its first definite total loss. For the first time since the United States began its national existence, we will have less people in it than during the preceding year, and those people will be comparatively older people.

HERETOFORE, the need for more and more regulation and interference by government in the affairs of people has been ably justified on grounds of "increasing complexity of civilization." This meant, in large part, simply an increased number of people trying to live in the same space. A century ago, for example, we did not need a host of regulations which are quite necessary in a modern big city. A century ago, it did not matter whether a sidewalk gate swung in or swung out, whereas today the difference can cost you $5 in police court. Dog tags, fire escapes, plumbing codes, and literally thousands upon thousands of other health and safety regulations are necessary today simply because we have more people trying to live in the same space which a century ago was occupied by quiet, peaceful towns and hamlets, composed of detached homes with picket fences and dirt streets.

BENJAMIN MILLER

Recent regulatory decisions have created a gas industry puzzle.

(SEE PAGE 169)

P. E. GOLSAN, JR.

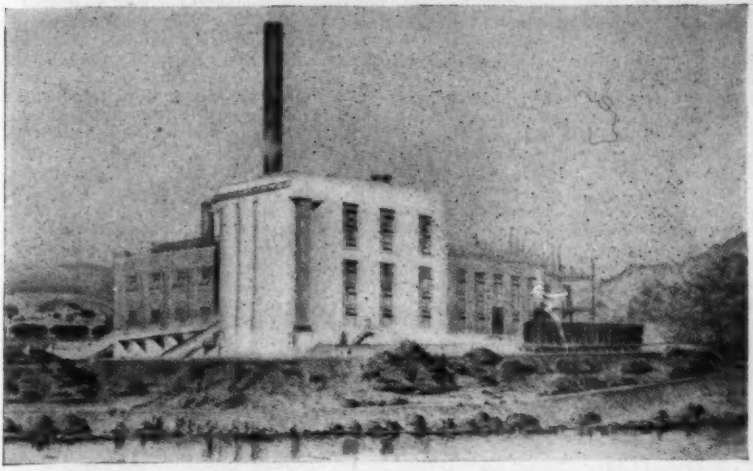
The population of America is changing in number, in character, and in location.

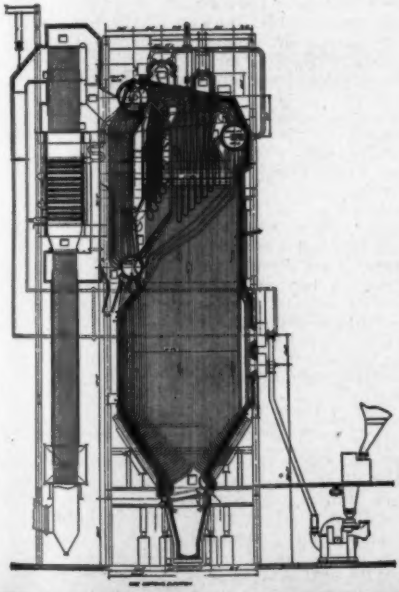
(SEE PAGE 151)

THE unorthodox thought which occurred to us was this: In the diminishing phase of our population life, will there be any reverse action towards *doing away* with some of the regulations which become unnecessary? In plainer words, will a nation with less people be able to get along with less laws and regulations? We doubt if it will work out that way. The birth rate of the French nation first turned down around the late 1880's. The French national population has been dropping steadily since early in the twentieth century. Yet the number of laws and regulations in France has multiplied at an accelerated pace during the very period of diminishing population.

PERHAPS it isn't solely a question of increased population which requires more laws and regulations. Increasing the tempo of civi-

Riley Steam Generating Unit Furnishes Steam for Pennsylvania Edison's New 31,250-kw. Unit





Actual Efficiency—89.77%
Guaranteed Efficiency—88.51%

A comparison of actual performance with guaranteed performance when operating at 277,841 lbs. per hr., 940 lbs. pressure, 900°F.

	Guaranteed	Actual
Total Steam Temp.	900°F.	900°F.
Temp. Water to Economizer	417°F.	453°F.
Temp. Water to Boiler	441°F.	487°F.
Temp. Gases Leaving Boiler	800°F.	800°F.
Temp. Gases Leaving Air Heater	304°F.	308°F.
Temp. Air Leaving Air Heater	580°F.	622°F.
Overall Efficiency	88.51%	89.77%

Unit fired by 3 No. 5 Riley Pulverizers

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STOKER CORPORATION, WORCESTER, MASS.

COMPLETE STEAM GENERATING UNITS
BOILERS • PULVERIZERS • BURNERS • STOKERS • SUPERHEATERS
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lization itself, by such revolutionary improvements and discoveries as radio, moving pictures, automobiles, airplanes, and so forth, inevitably drags behind in its wake a host of new problems which apparently we think can only be solved by inventing new laws.

THERE is also the likelihood that the number of regulations may be the result of the psychology of modern populations which tend to look to law for the ultimate solution of every problem, regardless of its nature. Also, there is a tendency on the part of some protagonists (for more and more law and more and more regulation) to assume that such a trend is inevitable, whereas in fact it may merely be a phase or part of a cycle.

NOT long ago, we read a learned article by a serious young student in an academic publication which solemnly predicted that price regulation, now extended to utilities and temporarily extended to other commodities during the war, would inevitably and permanently be extended to all forms of commercial enterprise. The reason is, the author said, "the vanishing power of competition no longer guarantees the public against exploitation." This was announced with all the gravity of a discovery of some profound economic truism.

YET, in the thirtieth anniversary issue of PUBLIC UTILITIES FORTNIGHTLY, which came out last month, we find the interesting statement that "in Lord Hale's time (1609-1676) all activities comprehended under what we call business was public and all of it subject to price control." Evidently competition in old England must have gotten a second wind, because such regulation vanished instead of the competition in subsequent years. It would seem to indicate that what some of our learned young writers regard as inevitable might simply be a swing of the pendulum. The regulation of three centuries ago is no longer with us today. The regulation of today may be but a memory a century hence.

FREDERICK H. MCDONALD

"Make no little plans. They have no magic to stir men's blood . . . !"

(SEE PAGE 174)

P. E. GOLSAN, JR., who is the author of this article on population trends, is district manager of the New York State Electric & Gas Corporation in charge of operations at Mechanicville, New York. Born in San Diego, California, MR. GOLSAN went to prep school in Kansas City, Missouri, and graduated from the Massachusetts Institute of Technology in 1934. The following year he joined his present organization as a cadet engineer.

BENJAMIN MILLER, whose article on the gas pressure regulator begins on page 169, is a consulting engineer of New York city who has recently been identified with the Institute of Gas Technology in Chicago. From 1927 to 1943, when he joined the institute, he was employed by the Doherty organization (Henry L. Doherty & Co. and Cities Service), becoming adviser on regulatory matters.

IT has been some time since we have had an article from the pen of FREDERICK MCDONALD, whose contribution in this issue begins on page 174. Born in Charleston, South Carolina, in 1892, and educated at Clemson College (ME, '14) and Pittsburgh University, MR. MCDONALD, after serving as a First Lieutenant in the engineers corps in World War I (Purple Heart), engaged in various professional activities for a number of industries and organizations. From 1924 to 1932 he was president of McDonald & Company, engineers and architects of Atlanta. Since then he has engaged in private practice as a consulting engineer and architect in Charleston, specializing in industrial location and design. He is the founder and director since 1938 of Community Research Institute, which specializes in community industrial development. He is the author of numerous articles published in popular, scientific, and business publications, generally dealing with the subject of community and industrial planning and development.

ERNEST R. ABRAMS, whose article on the TVA begins on page 160, is a well-known New York city writer on business and financial subjects whose articles have frequently appeared in this publication.

THE next number of this magazine will be out August 16th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 1-68, from 59 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

EDITORIAL STATEMENT
The Hartford (Connecticut) Courant.

"The unanswerable argument against the present Wagner Act is the fact that it is not working."

CHESTER BOWLES
Administrator, Office of Price Administration.

"We are sitting on the biggest and most dangerous keg of dynamite any nation ever sat on. Production is the final answer to inflation."

ALGERNON LEE
National chairman, Social Democratic Federation.

"Socialism can assume as many and as diverse forms as has capitalism in various countries. It can be totalitarian and imperialistic, but it can also be democratic and humanitarian."

EDITORIAL STATEMENT
The New Orleans Times-Picayne

"Tax exemption has been the incentive for the establishment of many publicly owned factories and businesses, and, also, it may be the secret of their apparently successful operation."

HARRY S. TRUMAN

"The American [radio] system has worked and must keep working. Regulation by natural forces of competition, even with obvious concomitant shortcomings, is to be preferred over rigid governmental regulation of a medium that by its very nature must be maintained as free as the press."

RAY B. WESTERFIELD
Professor of political economy, Yale University.

"In political economy it is always easy to offer seemingly rational arguments for government interference; if it is not a boom or 'ruinous inflation' that needs correction then it is a depression or widespread unemployment. But this implies perpetual regulation and control, for normal conditions are a fiction never acknowledged to exist."

JOHN P. FREY
President, AFL Metals Trade Department.

"We need one central [labor] authority. There are twenty-five different agencies dealing separately with questions affecting labor. Many of these agencies have no defined statutory authority and have grown in power through court decisions construing their authority. It has resulted in a lot of confusion, this discretionary authority of some organizations with no defined boundaries fixed by Congress."

JOSEPH H. BALL
U. S. Senator from Minnesota.

"One of government's primary functions in a democracy is protecting the rights of minorities. Government has a particular obligation in this field because the continued growth of unions and closed shops is due partly to government support."

THOMAS R. AMLIE
Former Representative from Wisconsin.

"The Murray full employment bill is nothing more than a pious wish, if not a pious fraud. If Japan should surrender unconditionally tomorrow we would in all probability have well over 20,000,000 unemployed in the United States of America before the end of the year."

WAYNE A. JOHNSTON
President, Illinois Central Railroad.

"As for me, I say of competition: Let it come! Give us policies of government that will be conducive to some semblance of equal opportunity, and the railroads will take care of themselves. Make it truly a struggle for survival of the fittest, and the railroads will not be found wanting."

R. C. LEFFINGWELL
Chairman, executive committee, J. P. Morgan & Co.

". . . gradually government must free agriculture, industry, and commerce here at home if we are to have a prosperous economy. It should be the government's policy not to meddle much with our money and to give agriculture and enterprise a measure of freedom and a hope of profit after all taxes."

LELAND OLDS
Vice chairman, Federal Power Commission.

". . . the power issue today is not only one of the country's biggest issues, but it is also symbolic of the all-inclusive issue which faces our democracy as we move into the postwar era—the issue as to whether we as a people are going to build our social order on the moral basis of coöperation."

DONALD M. NELSON
Former chairman, War Production Board.

". . . The government cannot in good faith permit any generation or group of the American people to spend their lives in the valley of an economic curve. While we want to see a maximum of free enterprise and personal initiative in our economy, yet to avoid human misery caused by prolonged depressions, we must count on the government to make sensible adjustments in the economy to prevent social demoralization and the waste of resources."

FRED M. VINSON
Former director, War Mobilization and Reconversion.

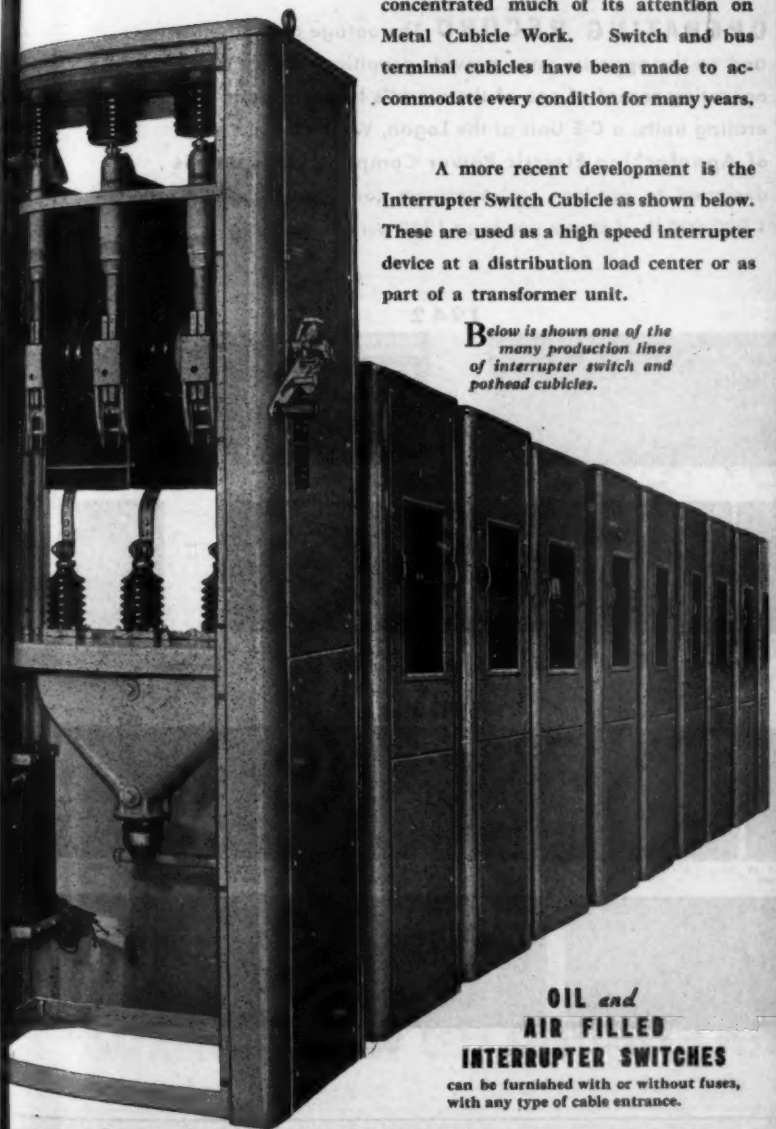
"We know we have an abundance of resources, plant, man power, and managerial know-how to produce a standard of living far higher than anything we have ever known. Likewise, we know that we have unfilled needs in America so diverse and so great as to challenge the capacity of even the greatest producing nation on earth. But needs are not demands, in the economic sense. People must have steady income and they must want to spend their income before needs become demands and people become customers."

R&IE the Switching Equipment SPECIALIST

Along with the many years experience in solving the problems of switchgear manufacturing, R&IE has concentrated much of its attention on Metal Cubicle Work. Switch and bus terminal cubicles have been made to accommodate every condition for many years.

A more recent development is the Interrupter Switch Cubicle as shown below. These are used as a high speed interrupter device at a distribution load center or as part of a transformer unit.

Below is shown one of the many production lines of interrupter switch and pothead cubicles.



OIL *and* AIR FILLED INTERRUPTER SWITCHES

can be furnished with or without fuses, with any type of cable entrance.

RAILWAY AND INDUSTRIAL ENGINEERING CO., GREENSBURG, PA.

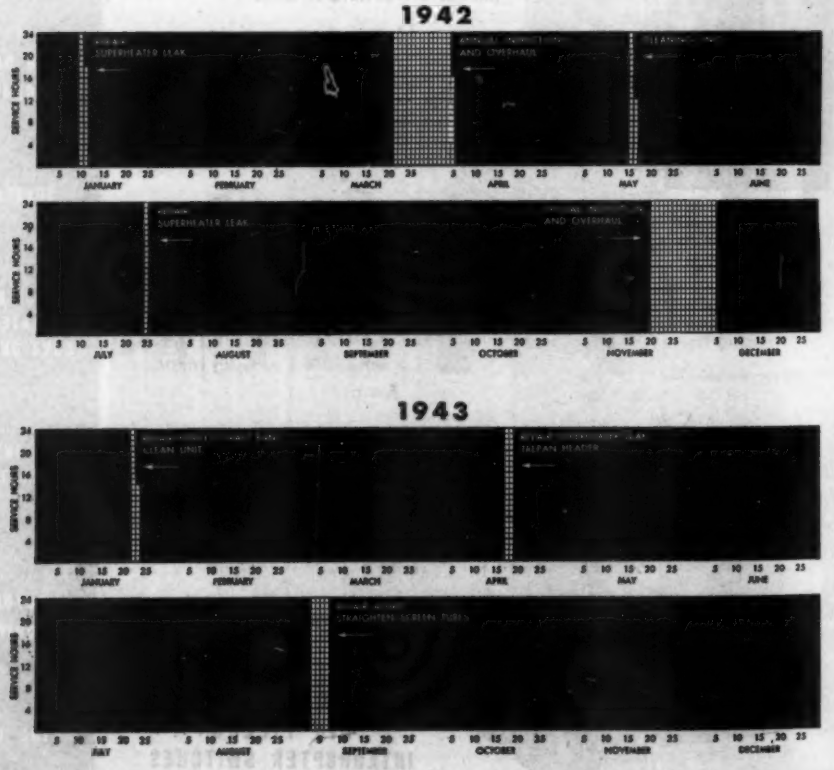
In Canada—Eastern Power Devices Ltd., Toronto.

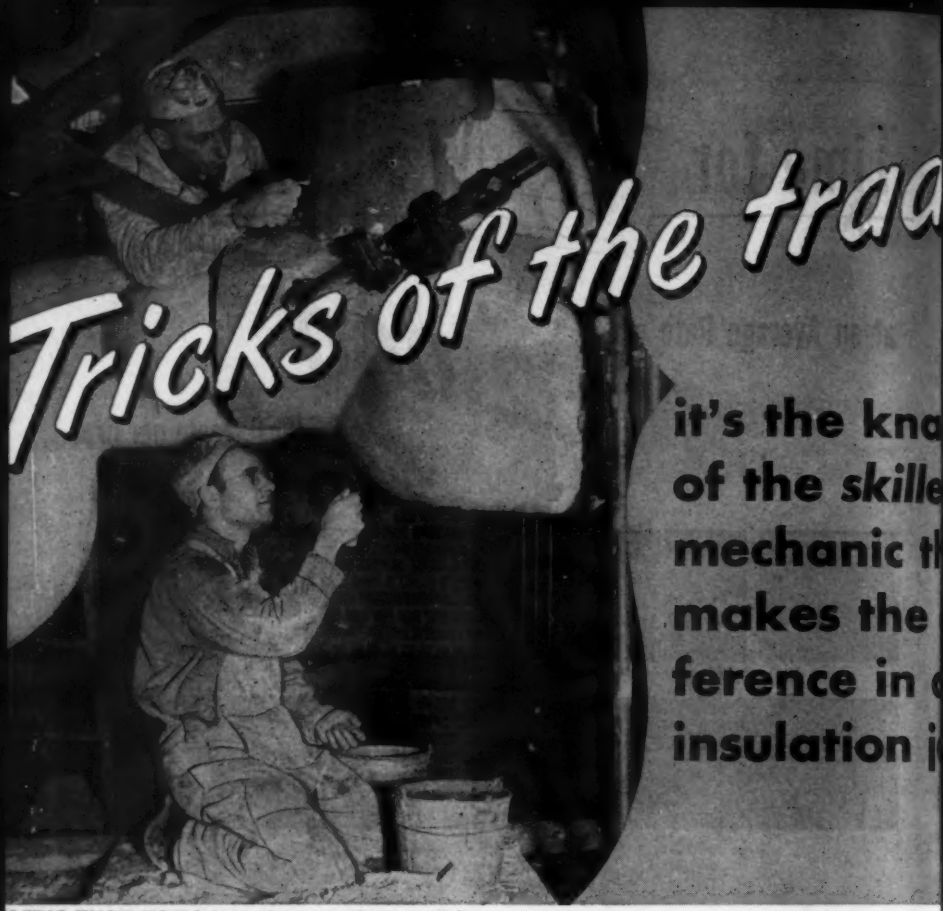
the CHECK LIST

- CONDUCTOR SUPPOR CLAMPS AND FITTI
- DISCONNECTING SWITC INDOOR AND OUTDOOR
- HORN GAP SWITC
- INTERRUPTER SWITC
- CUTOUTS AND THERMO-RUPTERS
- SWITCH OPERATI MECHANISMS
- SUBSTATIONS
- OPEN OR ENCLOSE ISOLATED PHASE HEAVY DUTY BUS
- KIRK INTERLOC SYSTEMS
- AUTOMATIC EQUIPMENT
- METAL CUBICLE
- TESTING DEVICE

On the Line 93.6% of Total

OPERATING RECORD The outage charts below and on the opposite page provide graphic evidence of the operating record of one of the world's largest steam generating units; a C-E Unit at the Logan, West Virginia plant of Appalachian Electric Power Company. This unit is designed to produce, at maximum continuous capacity, 1,000,000 lb of steam per hr at 1340 psi and 925 deg. F.





N WHO KNOW HOW help another steam plant keep fuel
s down . . . this time using two types of J-M insulations.

THERE is an art in properly applying insulations—and only specialists know the many ttle practices that make for success. Lack of this nowledge may greatly reduce the value of your sulation investment.

For permanent heat control and fuel savings, ohns-Manville places at your disposal a trained rce of expert workmen and engineers—a nationide organization capable of handling all details f an insulation job and taking complete respon- bility from planning through application.

In some areas, J-M's own construction forces e ready to help you. In others, J-M Technical ervice Units have been created by selecting contracting companies of proved reliability cialized experience in this field.

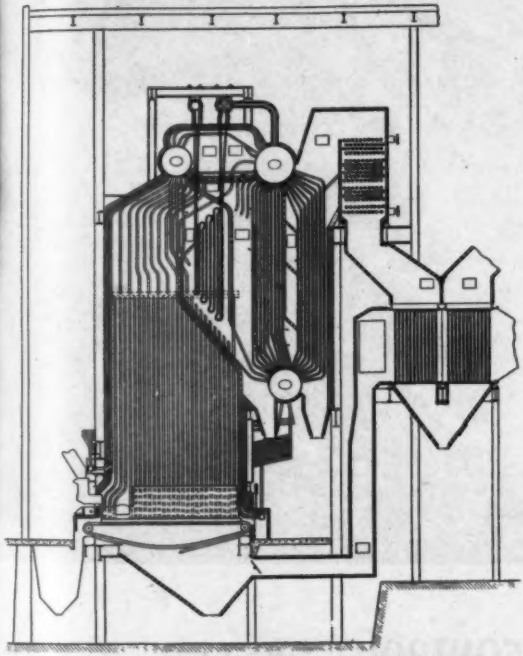
These Insulation Specialists, backed b insulation research and practical experi able to choose the right insulating materi from a complete line of insulations. Th the right thickness, the right bond or for every industrial temperature, ever requirement.

All are important reasons why J-M ma to solve your next insulating problem . . . more quickly, *safely!* For further information, write Johns-Manville, 22 East 40th Street, New York 16, N. Y.

OHNS-MANVILLE *First in* **INSULATI**

FW STEAM GENERATORS for CENTRAL ILLINOIS Electric and Gas Co.

Two large steam generators for spreader type stoker firing are being built by Foster Wheeler to meet the particular conditions pertaining to this station.



The requirements are:

215,000 lb. per hr. (peak load)

650 lb. per sq. in. pressure

830 deg. F. final steam temperature

85% (approximate) efficiency

Fuel—Illinois coal

● Selection of this design was made after thorough study by the operators and their consulting engineers of the economic and engineering problems involved.

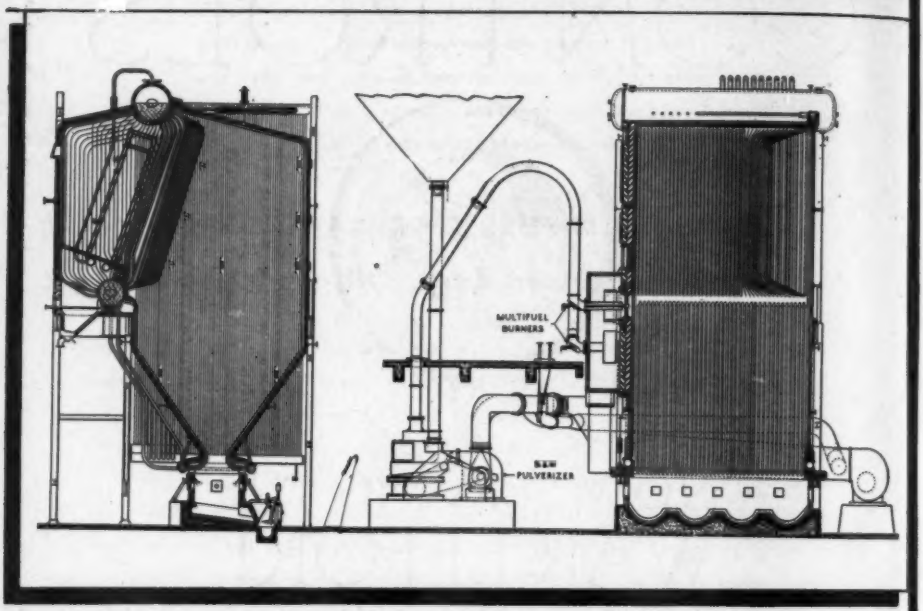
● The choice was also influenced by the exceptional performance of similar installations operating with a comparable grade of fuel.

● These units are of the 3-drum type with Full Water Cooled Furnaces, Convection Superheaters, Condenser type Superheat Control, Extended Surface Economizers and Two-pass Tubular Air Preheaters, as shown above.

FOSTER WHEELER CORPORATION ● 165 BROADWAY, NEW YORK 6, N. Y.

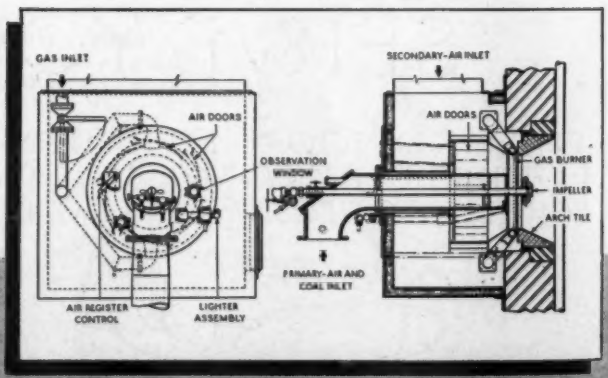
FW FOSTER WHEELER FW

Use All Three



Above—Typical B&W Integral-Furnace Boiler arranged for Multi-Fuel Firing.

Right—Details of B&W Multi-Fuel Burner.



ALL-TRUCK CONSTRUCTION

YOU'LL FIND International Trucks of virtually all models at work in the public utility field—at work on all types of jobs.

But no matter what the model, each is International all-truck design, engineering and construction—built without compromise with passenger car construction to furnish long, dependable, economical service.

The International Truck Line is complete. It includes light, medium, and heavy-duty trucks. And so outstanding is International performance that in the ten years before the war more heavy-duty International Trucks were sold than any other make.

You'll want International Truck performance and efficiency postwar. Quantities still are limited, but now is the time to plan. Therefore get in touch with your nearest International Truck Dealer or Branch.

INTERNATIONAL HARVESTER COMPANY
180 North Michigan Avenue Chicago 1, Illinois

NEW TRUCKS: The government has authorized the manufacture of a limited quantity of light, medium, and heavy-duty International Trucks for essential civilian hauling.

SERVICE: Many operators will have to wait for trucks. Maintenance of existing vehicles is just as important today as before VE Day. Therefore—be sure your trucks get top maintenance and service at International Truck Dealers and Branches.

INTERNATIONAL *Trucks*

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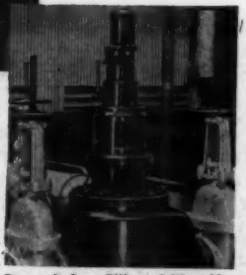
Service water clears itself in

How the Elliott self-cleaning strainer is installed. Water goes straight through, foreign matter caught and ejected downwards.

One of three large self-cleaning strainers for bearing cooling water, in a central station.



One of five Elliott 14" self-cleaning strainers in a hydro plant. They protect fire pumps, transformer cooling and generator cooling coils.

ELLIOTT

SELF-CLEANING STRAINERS

Without attention beyond occasional supervision, this unit will strain incoming water, remove and eject abrasive or other foreign matter, and deliver clear water for service use.

The straining process is continuous. A geared motor slowly rotates a sealing box which blocks off each straining section in turn. Back-flow of water then flushes the isolated straining section, driving the entrained impurities out through the bottom of the unit, and the cleared section again takes up its straining job.

The only bearing exposed to grit-laden water is the lower bearing of the rotating element. This is a cutless rubber bearing, immune to damage and easily replaceable should it become necessary. Elliott self-cleaning strainers serve many utilities especially where large quantities of relatively fine dirt must be removed.

Where manual cleaning is permissible, Elliott twin strainers will also give non-stop service, one cylinder always being in operation while the other is shut down for removal and dumping of the strainer basket.

Use our wide experience in meeting your straining needs. Talk it over with the Elliott man.

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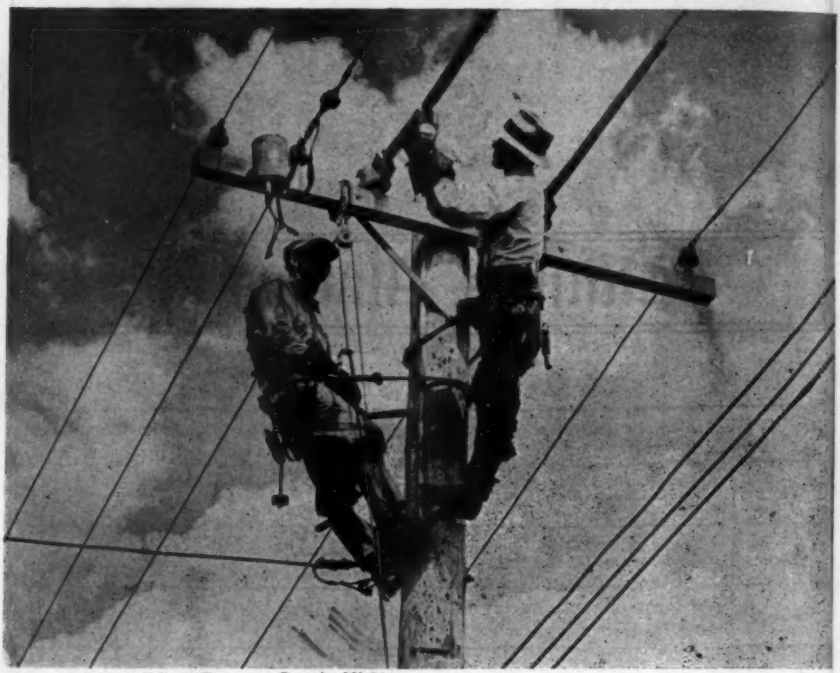
Utilities Almanack

Due to wartime travel restriction, conventions listed are subject to cancellation.

AUGUST

2	Th	¶ *American Water Works Association, Western Pennsylvania Section, will hold meeting, Pittsburgh, Pa., Sept. 14, 1945.*
3	F	¶ *New England Gas Association will hold Home Service Development Conference, Boston, Mass., Sept. 17–21, 1945.*
4	Sa	¶ *American Water Works Association, Michigan Section, will hold meeting, Flint, Mich., Sept. 19, 20, 1945.*
5	S	¶ *Chamber of Commerce of the United States will hold board meeting, Washington, D. C., Sept. 21, 22, 1945.*
6	M	¶ *Texas Water Conservation Association will hold annual meeting, Austin, Tex., Oct. 3, 4, 1945.*
7	Tu	¶ *American Water Works Association, Southwest Section, will hold meeting, Oct. 15–17, 1945.*
8	W	¶ *American Water Works Association, California Section, will hold meeting, Los Angeles, Cal., Oct. 23, 1945.*
9	Th	¶ *American Water Works Association, Wisconsin Section, will hold meeting, Milwaukee, Wis., Oct. 30, 31, 1945.*
10	F	¶ *American Water Works Association, North Carolina Section, will hold meeting, Charlotte, N. C., Nov. 5–7, 1945.*
11	Sa	¶ *American Water Works Association, Virginia Section, will convene, Roanoke, Va., Nov. 8, 9, 1945.*
12	S	¶ *American Water Works Association, New Jersey Section, will hold meeting, Atlantic City, N. J., Nov. 8–10, 1945.*
13	M	¶ *American Water Works Association, Florida Section, will hold meeting, Nov. 15–17, 1945.*
14	Tu	¶ *Malheur Coöperative Electric Association starts annual meeting, Vale, Or., 1945.*
15	W	¶ *Chamber of Commerce of the United States will hold board meeting, Washington, D. C., Nov. 30-Dec. 1, 1945.*



Courtesy, Detroit Edison Company, Detroit, Michigan

Checking Overhead Lines

Public Utilities
FORTNIGHTLY

VOL. XXXVI; No. 3 AUGUST 2, 1945

Effect of Recent Population Trends on Utilities

The author points out the importance of a careful analysis of the subject by each utility as it applies to its own service area, because of its effect on future business.

BY P. E. GOLSAN, JR.

A STUDY of population trends and their characteristics reveals many factors which have now or eventually will have an effect upon utility earnings. The utility derives its revenue from a fixed geographical area, and the economic prosperity of this area directly reflects upon the earnings of the utility. For this reason any factor that affects the size or character of the population of the area affects the utility earnings. If the population increases or decreases the revenue likewise increases or decreases. Further, in a rising population there is a continuous demand for new investment with prospects of supporting revenue; but with a declining trend the utility is faced with decreasing revenue to meet the costs of fixed investment.

What are some of these population trends? A glance over the latest population statistics established by registration for war ration books reveals that certain long-time characteristic trends in population have not only been maintained during the past year, but also have been increased.

Our National Population Trend

As a nation our rate of population increase has diminished and, according to the Bureau of the Census, our total population will approach a stationary figure some time after 1980. Figure 1 illustrates this trend. Some experts feel that this trend will not reach its peak as soon as 1980 (and let's hope they're right), and lately have pointed to the wartime baby boom as an indication that the birth rate will recover its lost ground in the postwar years. However, W. H. Grabill of the Bureau of the Census predicts that there will only be a short-time rise in the birth rate, followed by a resumption of the long-term downward trend.

This national trend is not of immediate concern to the industry for while we eventually must face the halt in new customers this turning point has been estimated to arrive in thirty-five years. Meanwhile we have 1,500,000 new farm customers and 1,000,000 new nonfarm customers to connect without making any allowance for population increase.

At the end of this 35-year period, however, we should anticipate that, with no reversal in trend, we should expect a gradual diminution in customers. This would mean that promotional activities should be increased proportionately to support the fixed charges upon the investment. Thirty-five years is a long time off and many other aspects of population trends assume more importance locally in terms of effect upon revenues.

The Population Grows Older

There is a by-product of this national population trend which will have its effect upon our industry although not so markedly as on other industries. This by-product is the steadily increasing age of our population.

Figure 2 shows the estimated age group curves as predicted by the National Resources Committee. An indication of the effect of these trends is shown in the decline in registration of elementary schools in 1940 and in the leveling of registration in high schools in the states of New York, Ohio, and Washington. This decrease in the child population, if it continues its downward trend, will eventually affect many industries quite noticeably, among which are the fluid milk industry (children consume 50 per cent more milk than adults), infants' clothing, toys, bicycles, pediatricians, and so on. And, of course, on the other side, industries catering mostly to older groups will gain; among these are movies, radio, book and magazine publishing and printing, golf, fishing, and real estate in southern and southwestern states.

The curve of population in the 19-64-year age bracket is expected to gain until 1960. This should mean that there will be an increasing number of marriages and consequent demand for additional houses (small ones for small families), probably bringing the total number of housing units up from 33,000,000 to 38,000,000—a gain of 5,000,000 new domestic customers in the next fifteen years, before the rate begins to slacken.

The effect of decrease in milk plant activity and others serving the younger age group will probably be offset by the increase in movie, radio, television, and other industries catering to the 19-64 age group. Perhaps the increase will more than offset the decrease as more

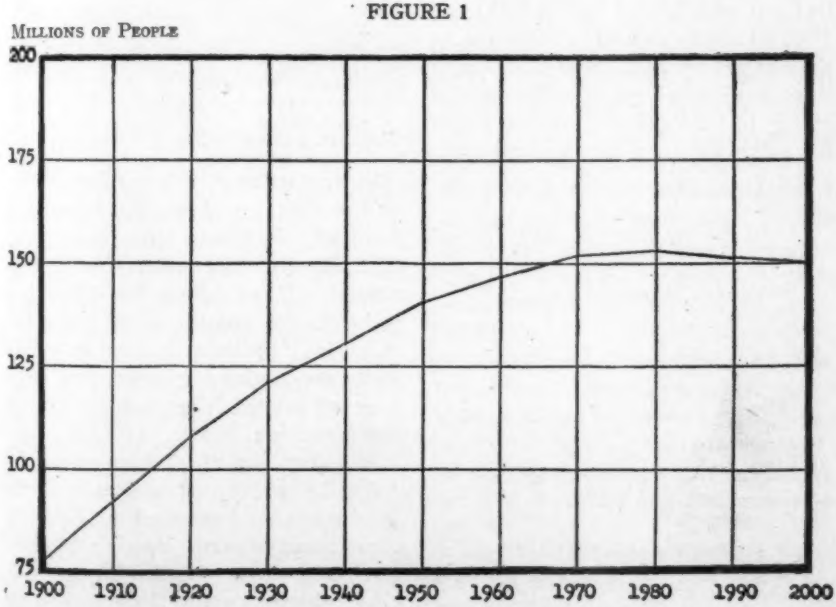
new uses of electricity are introduced into the home and industry.

The effect of the 5,000,000 new homes will, of course, be an increase in revenue.

The Southern and Western Trend

It is this geographical aspect of the population trend that will have the selective effect upon local utilities. With the advent of war industries, notable population changes took place with much publicity given the great increases and decreases in the population of certain cities. Perhaps some of this can be passed off as being merely transitional and only for the duration. Perhaps some of the war workers and soldiers will take up residence once again in their prewar home towns and countrysides. But only perhaps. Consider first the general geographic population trend of the center of population by decades from 1790. The trend is generally westerly and in the past three or four decades has also been slightly southerly. This trend is prewar. Now consider the latest geographical data. According to *Business Week,* the Bureau of the Census release, based on Ration Book IV registrations (November 1, 1943) shows a continuation of earlier wartime trends; major migration from northern and central parts of the U.S. to far western and southern coastal areas; hardest hit, north central farm belt; major beneficiaries, three western coast states plus Nevada and Arizona. An illustration: California's increases in population, 1940

FIGURE 1



census to May 1, 1943, 529,000; from May 1, 1943, to November 1, 1943, 485,000.

Another indication of this trend is had in the figures shown on page 155.

THE problem facing the utilities now is how much of this recent change will hold and how much return to prewar status? Perhaps an indication of the relative possibility of holding gains or recouping losses in population might be had in a study of population change figures in the decade 1930-40 and in the 3-year period 1940-43. Let's consider these figures on a statewide basis. If a state had a gain in population between 1930 and 1940 then there must be some attraction in this state that will help it hold gains or perhaps recoup losses registered between 1940 and 1943. Also, if a state had lost population between 1930 and 1940 its ability to hold or recoup after the war would appear to be poor. Using this method as a basis of comparison of ability to hold gains or recoup losses the following standings are apparent:

GROUP I—*Most Likely to Hold All or Part of Gain*

States having population gains in both periods, 1930-40 and 1940-43

Rank
1. District of Columbia
2. Florida
3. California
4. Nevada
5. Oregon
6. Arizona
7. Delaware
8. Maryland
9. Washington
10. Utah
11. Virginia
12. Connecticut
13. Massachusetts

GROUP II—*Possible to Recoup Part of Loss*

States having population gains in 1930-40 but losses in 1940-43

Rank
14. New Mexico
15. Idaho
16. Louisiana
17. North Carolina
18. Tennessee
19. West Virginia
20. Texas
21. Minnesota
22. South Carolina
23. Kentucky
24. Michigan
25. Mississippi
26. Wyoming
27. Colorado
28. New York
29. Wisconsin
30. Alabama
31. Georgia
32. Maine
33. Pennsylvania
34. New Hampshire
35. Arkansas
36. Missouri
37. Ohio
38. Rhode Island
39. Illinois
40. Iowa
41. New Jersey
42. Montana

GROUP III—*Chances of Recouping Not Too Good*

States having population losses in both periods

Rank
43. Vermont
44. Indiana
45. Oklahoma
46. Kansas
47. Nebraska
48. North Dakota
49. South Dakota

AN inspection of this list reveals the southern and western trend immediately. In Group I five out of the first six states are either southern or western (D. C. taking first place due to heavy government employment increase). Of the thirteen states in Group I nine are southern or western and only four are eastern. The Midwest has no representation.

In Group II the first seven are southern and western, and the heavily populated states are down the list. Michigan ranks twenty-fourth, New York twenty-eighth, Pennsylvania thirty-third, Ohio thirty-seventh, Illinois thirty-ninth, and New Jersey forty-first.

	1941 Compared with 1944	
	% Increase in Kw. Hr.	*% Increase in Generating Capacity*
United States	37	14
Pacific	73	36
West-South Central ...	62	19
East-South Central	59	41
East-North Central	37	11
South Atlantic	34	16
Mountain	32	13
West-North Central ...	22	5
New England	20	8
Middle-Atlantic	20	6

Group III is composed principally of Midwestern states.

THE existence of huge blocks of cheap power in the South and West will also induce industry (chiefly heavy electric users such as electrochemical and metallurgical plants) to locate in these areas, at the expense of the North and East. The Bonneville Power Administration has in the neighborhood of 500,000 kilovolt amperes in contracts that stand to be canceled, in anticipation of which a bill has been passed in Congress to spend $3,487,110 from Federal funds for marketing operations and administrative expense. Likewise, $110,000 has been earmarked for marketing operations in the Southwestern Power Administration. Bonneville has already hired experts to aid in planning and promotion of new business in the chemical and metallurgical industries. Before the war the bulk of these industries were in the East.

Through the efforts of the RFC and the Senate Small Business Committee, investigations for new nonwar uses of magnesium and other light metals are presently being carried on, the purpose being to promote new small businesses and place in operation the 12 Defense Plant Corporation magnesium plants with a monthly capacity of 42,000,000 pounds now standing idle. These plants are located chiefly in the West and South which would mean that the new business would locate in these areas to be near the source of supply.

In addition, the products of these new small businesses will probably be items of hardware, domestic appliances, and industrial equipment which will directly compete with eastern and middle western manufacturers.

Some of these manufacturers might also migrate, which will mean population lost to the East and Middle West by workers following the trend.

THE recent Rivers and Harbors Bill contained $381,968,000 for the beginning of seven power projects in Texas, the Southwest, and Northwest. The Missouri Valley Authority and the Arkansas Valley Authority are also being planned. All of these projects are aimed at creating areas of balanced industrial and agricultural establishments. This means many small plants producing for local needs, as the TVA is currently establishing. But the establishment of such small plants producing for local needs will be at the expense of the Middle West and East where principal manufacturing centers are located. Any success of these plans will reduce the activity of other areas; and note that these plans are being located principally in the South and West, reinforcing the trend.

Another development that may also increase the southerly direction of our trends is the present freight rate case before the Supreme Court. A reduction of freight rates for the South would cause an increase in industrial activity in this area at the expense of other areas.

These trends do not mean that overnight some areas will be abandoned and others overpopulated. These changes have been in progress for some time now, but the effect of these changes should become gradually more and more noticeable. Locally the effect upon our industry will be delayed or obscured by the natural growth in the use of our product which will be immense in the next twenty years. However, certain areas as indicated by the three groupings should do much better than others. Some localities face a serious threat to revenues, while others face the necessity of expansion, should these trends continue. The Midwest and the industrial East will not produce the increased revenues that can be expected in the South and West.

Rural versus City?

IN the past, take 1910 to 1930 for example, city populations grew faster than rural. Then between 1930 and 1940 rural population growth outstripped city. Now between 1940 and 1943, the city once more assumes the lead. This changing back and forth can probably be traced to: 1910-1930, growth of industry; 1930-1940, back to the farm for self-support; 1940-1943, lure of wartime wages and patriotism bringing increased workers into the city factories. Thus past experience furnishes no sure indication of trend in either direction over long periods. However, decentralization of the city is thought to be an established trend and perhaps the answer, ultimately, to Rural *versus* City. We might end up with a compromise between the two because cities are losing population in their centers and growing in suburbs. This would mean greater investment in distribution facilities for the utility for the same number of customers.

In General

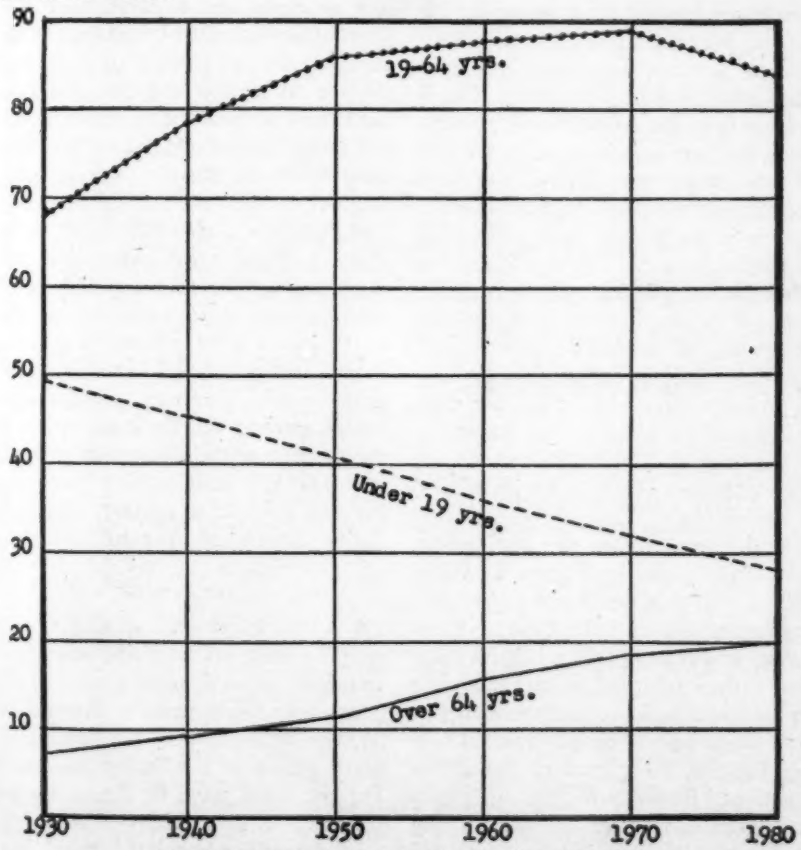
NATIONALLY, during the next fifteen years with the expected increase in new families (domestic customers), our revenues will continue to gain. And even after the peak of the 19-64 age curve is reached (fifteen years), our national sales will probably be able to hold their own in face of the decreasing rate of population increase for some time to come, because of the new and improved uses of our product that are now being developed and will

be in the near future. Increased saturation of the appliance market should help boost sales for many years.

Locally, however, in many areas the picture is not so bright. Many localities have been losing population in face of a rising national trend. Will new uses and improvements be able to overcome the loss of revenue due to declining population? If fifteen years does mean the reversal of the increase in new families (domestic customers) nationally, then in some localities this reversal is already taking place. Should this reversal bring about a decrease more rapid than the possible increase of revenue due to sales effort, then revenue will begin to decline and with it return on the investment.

With the increasing age of our popu-

FIGURE 2



ESTIMATED POPULATION BY AGE GROUPS

lation the trend towards those states with milder climates will continue the abnormal population increase in the southern and western states. This will also continue the decline in population increase for the northern and northeastern states.

What Can Be Done?

1. NATIONALLY—Nationally the solution to the declining population increase rate lies in increasing the birth rate, decreasing the death rate, and increasing immigration. Any of these, of course, are beyond the scope of our industry. Some totalitarian states have tried to increase birth rates but their results have not been a success. Immigration laws are a function of government, and while an increase in the rate of admissions would swell the total population, the place of admission is equally important as immigrants tend to stay close to this point. Therefore, West coast admissions would swell the national population but increase the geographic unbalance due to our own internal trend. These problems belong to government, and the pros and cons are beyond the scope of this article.

Decreasing death rate has been the main objective of medical research and the results have been very good as witness the trend of the age group over sixty-four years in Figure 2. Many believe that this trend will be bettered even more substantially in the next few years, which would be a helpful solution to the total trend. However, owing to the increase in retirement and pension plans, as well as government old-age benefits, there remains the aforementioned tendency for this age group to migrate to warmer climates, serving to increase the previously mentioned geographic trend which benefits chiefly the South and the West.

2. LOCALLY—Those areas with declining population should first determine why they are unpopular. Is it the climate or poor soil? Do local or state tax structures drive out manufacturing? Have once abundant raw materials failed or been made obsolete? All of these and many more questions should be investigated and measures taken to correct the harmful situation. Further, raw materials, new markets, new products, and so forth, should be thoroughly inspected by competent authorities on the subject of industrial development, and definite plans be made and carried out by the responsible bodies in the area. This has been done very successfully, and is being done right now in several localities. The utility will naturally want to see that its service areas have some such progressive plan under way and should lend its industrial promotion resources to the task. Further effort of the utility should be that of helping as much as possible to hold on to the present population; beyond this the task will be to expand as great a sales effort as possible toward improving and increasing business in order to protect or improve the net return upon the investment.

Conclusions

A CAREFUL analysis should be made by each utility of the population trends in its service areas, and the reasons for these trends determined. Where these trends are downward some means of combating the reason for the trend must be drawn up and placed in action. Many times in the past, decreasing population trends have

continued on and on, reaching new lows each year. Most spectacular of these downward trends are the famous ghost towns of the gold fields.

In general, utilities have as yet to suffer from a decreasing population trend because they are still growing and extending lines. Even in those areas whose population has been on a slow decline for many years, facilities have not been fully extended and a slow steady growth in the distribution system has hidden the decrease in total population.

Citizen Taxpayers Are the "Investors" in Governmental Public Enterprises

"SECRETARY of Commerce Henry Wallace is giving very serious thought, he says, to a series of questions just asked him by Robert Gaylord, board chairman of the National Association of Manufacturers.

"And all other Americans could well be giving consideration to these questions, too.

"No. 1 is this: 'Private enterprise must be subject to regulation by the government. Everyone accepts that. The only question is, How far can that regulation go before it changes private enterprise into controlled or public enterprise?' . . .

"Then Mr. Gaylord asks a question also about those public enterprises which are to be continued in operation by the government after the war. He points out that all the citizens of this country are investors, by reason of taxes, in these enterprises—and all are stockholders, too, by reason of their vote. He inquires: 'Are not these investors and stockholders entitled to the same information about public enterprise that private management gives to them as stockholders and investors in private enterprise?'

"We have the spectacle today of a government which is ultra cautious about requiring private business report to stockholders while at the same time it operates more than a hundred public corporations and does as it pleases about accounting for those operations or keeping their business a mystery. Certainly uniform accounting to the people on how their money is invested in these operations is just as important as the accounting on their private investments. Otherwise they will never know what should be done about keeping or abandoning these vast Federal ventures into enterprises of many types."

—EDITORIAL STATEMENT,
Grand Rapids (Michigan) Press.

The Valley and the Propaganda; Another Portrait of TVA

The author points to what he asserts to be some glaring misstatements in the book by R. L. Duffus on the Federal government's Tennessee project.

By ERNEST R. ABRAMS

"THE immediate purposes of the Tennessee Valley Authority," said TVA's 1934 annual report, "were to maintain and operate the Wilson dam and power plant, to administer the fertilizer plants at Muscle Shoals, and to build the Cove creek (Norris) dam on the Clinch river. The more general purposes of the authority are to promote the national defense, to further the proper use, conservation, and development of the natural resources of the Tennessee river area and of related adjoining territory, to further agricultural and industrial development, and to promote the economic and social well-being of the people of the region."

In partial attainment of these objectives, TVA has built or acquired twenty-one dams on the Tennessee and its tributaries during its more than eleven years of active operation, at nineteen of which power development is one of the essential features. It has created 650 miles of 9-foot waterway from Paducah to Knoxville. Through the obvious device of permanently inundating all lands in the valley subject to normal overflow, it has erased the danger of all but unprecedented floods. Through modernization and expansion of the World War I nitrate plants it inherited from the War Department, it has been able to supply farmers in and out of the valley with fertilizers. Since the Pearl Harbor attack, it has contributed substantially to our supply of explosives. It has been active in the prevention and cure of soil erosion; it has furnished war industries with large blocks of power; and it has brought a

measure of prosperity to the people of the region. But TVA's most energetic activity, the one into which it has entered with the greatest enthusiasm, has been telling the world of its magnificent accomplishments.

Its latest and most attractive piece of propaganda is a book of 167 pages, entitled "The Valley and Its People—A Portrait of TVA." Not that any TVA director or member of its staff wrote the book, although Charles Krutch of its graphics department did supply the 202 photographic illustrations that cover three-fifths of its page area.

The author is R. L. Duffus, a "left of center" member of the editorial staff of *The New York Times.* But no sophisticated reader can flip its pages without immediately recognizing the TVA hand. The author is too well versed in the TVA "party line."

The book having already been reviewed in the FORTNIGHTLY, this article will deal solely with some of its fiction, and its errors of commission and omission. But before settling down to that task, a few observations may be in order. Mr. Duffus, whose ability to arrange the alphabet in attractive order is both recognized and admired, has, for the most part, written a "sweet" book. He has portrayed in simple, yet imaginative, style the plight of the valley people during the depression, their struggles to produce a living on badly corroded lands, their Anglo-Saxon heritage, their pride. And he has reflected the ray of sunshine that TVA has brought into their bleak lives. As a social document, most of the book has considerable to recommend it.

But after 48 pages of sweetness, Mr. Duffus' New Deal idolatry began to manifest itself; so he devoted Chapter 4—pages 59 to 75, inclusive — to a rehash of the supposedly naughty tricks that wicked privately owned electric utilities played on TVA in the days of its tender childhood. The book would have made a more calm and objective appeal had these pages of the manuscript been omitted. But since he chose to incorporate them in his book, suppose we give them a glance.

On page 27, Mr. Duffus said:

> It [TVA's electric energy] flows into a network of power lines extending from the Great Lakes to the Gulf of Mexico, from the Mississippi to the Appalachians. It is now furnishing over 15 per cent of all the power used in that vast area.

The implication is, of course, that it is TVA's power that is driving the wheels of industry on the shores of the Great Lakes and the Gulf of Mexico, on the banks of the Mississippi, and in Appalachian valleys. This is, obviously, untrue. This entire area has been tied together with interconnected transmission lines to permit power to flow to those regions of greatest demand, and this interconnection of generation facilities was made as much for the benefit of TVA as it was for the privately owned power companies of the area. In the 26-week period from May 25th to November 22nd of 1941, when water conditions in the Tennessee valley were exceedingly poor and TVA was compelled to force a "brown-out" on its commercial consumers, privately owned utilities from as far away as Texas and Illinois were shoving power toward the Tennessee valley to enable TVA to serve its defense consumers. During this 26-week

period, TVA exported 153,400,000 kilowatt hours to privately owned utilities, but it received from them in return 348,902,400 kilowatt hours. In other words, TVA failed by 195,502,400 kilowatt hours to produce enough power during this 26-week period to serve its own customers.

WITHIN recent years TVA has vastly increased its installed generating capacity, with the result that there are times of the day or week or month when it has a surplus of power available for delivery outside its service area. But, at other times, not even its huge generating capacity can turn out sufficient energy to meet the peak demands of aluminum manufacturers and other war industries in the valley, and it must import power from outside the valley. During the 1944 fiscal year TVA delivered to private power companies some 1,015,983,000 kilowatt hours of energy, but it received from them 671,318,000 kilowatt hours in return. Thus, the excess of TVA deliveries over TVA receipts during the fiscal year was 344,665,000 kilowatt hours.

Now, let's consider the statement that TVA "is now furnishing over 15 per cent of all the power used in that vast area." As all informed persons know, TVA's power, except for the excess of exports over imports noted above, is being consumed in a relatively small portion of "that vast area." It is being consumed in Tennessee and the immediately adjoining portions of Mississippi, Alabama, Georgia, South Carolina, North Carolina, and Kentucky, which is nothing to cheer wildly about. TVA's power sales in the 1944 fiscal year were but 451,826,000 kilowatt hours greater than the 1944 sales of Consolidated Edison Company of New York, which serves all of three and the major portion of another of New York city's five boroughs. And TVA's energy sales in the same fiscal year were 1,916,670,000 kilowatt hours less than the 1944 electric sales of Niagara Hudson Power Corporation, which serves only a part of New York state. Furthermore, TVA's excess of power exports over power imports could hardly cause a ripple in the vast area into which it poured. Its excess of 344,665,000 kilowatt hours was only 39.6 per cent of the total 1944 kilowatt-hour sales of Dayton Power & Light Company alone.

AGAIN. After stating on page 53 that "floods were causing an average annual loss of $1,780,000" before TVA came to the rescue, Mr. Duffus said, on page 94:

Flood control, as former Chief Engineer

❦

¶ *"... TVA has built or acquired twenty-one dams on the Tennessee and its tributaries during its more than eleven years of active operation, at nineteen of which power development is one of the essential features. It has created 650 miles of 9-foot waterway from Paducah to Knoxville. Through the obvious device of permanently inundating all lands in the valley subject to normal overflow, it has erased the danger of all but unprecedented floods."*

> Parker said, is "the most difficult and exact operation." The excess water must go downstream at a time when it will do the least harm. It must go down anyhow when the reservoirs are full. The reservoirs therefore must not be full when flood water is likely to come along. . . . Chattanooga must still have local protective works to guard against the block-buster floods that come at rare but unpredictable intervals.

Mr. Duffus appears to have overlooked a couple of things. During a devastating flood on the Ohio-Mississippi river system in the spring of 1937, Colonel R. C. Powell, Army division engineer at Cincinnati, asked TVA to withhold the release of water at its Norris and Wheeler dams until levels in the lower Ohio and the Mississippi rivers had dropped. But TVA couldn't comply with this request; both reservoirs were brimful of water for power-making purposes.

Then, too, as all engineers recognize, whatever flood protection may be provided by TVA's dams is due primarily to the fact that most of the lands subject to overflow before their construction are now permanently flooded by its reservoirs. Speaking at New Orleans in November, 1944, William M. Whittington, chairman of the House Flood Control Committee, said:

> What flood control obtains in the Tennessee valley? Instead of protecting the valley, the construction of dams from the mouth of the Tennessee to its source has converted the entire valley into reservoirs. Before the TVA was authorized, the greatest area that could be overflown was 420,000 acres. Now 360,000 acres, or six-sevenths of the entire area, are under water in the reservoir bottoms of the Tennessee valley.

ACCORDING to TVA's 1944 annual report, the net expense or loss sustained in operating and maintaining its flood-control system was $917,004 before any consideration of interest on the public funds invested in flood-control facilities. And the report indicated that a combined investment of about $320,000,000 had been made for flood control and navigation improvement.

In June, 1938, when TVA's investment in the Wilson, Wheeler, and Norris dams totaled less than $100,000,000, TVA's directors, acting on the advice of its committee on financial policies, allocated 20 per cent of this investment to flood control, 28 per cent to navigation improvement, and 52 per cent to power development. This allocation formula later received presidential approval. Accordingly, if the combined investment for flood control and navigation improvement be split according to this formula, a flood-control investment of $134,400,000 at the end of the 1944 fiscal year is indicated. During its 1944 fiscal year, the Federal government paid an average rate of 1.9 per cent interest on the long-term money it had borrowed from its citizens, and, if this rate is applied to TVA's flood-control investment, it shows that TVA should have paid a 1944 interest bill of $2,553,600 on the public funds invested in its flood-control works. Add this to the net loss of $917,004 sustained in flood-control activities, and you get a figure of $3,470,604 as the cost to American taxpayers of TVA flood control during the 1944 fiscal year. This is, of course, nearly twice the average annual flood loss in the Tennessee valley before TVA was established.

NOR is that all. The 360,000 acres of rich bottom land, on which abundant crops were grown in most pre-TVA years, not only are now out of cultivation for all time, but they have definitely been removed from the tax rolls of local governments to their

Surplus Electric Power

"WITHIN recent years TVA has vastly increased its installed generating capacity, with the result that there are times of the day or week or month when it has a surplus of power available for delivery outside its service area. But, at other times, not even its huge generating capacity can turn out sufficient energy to meet the peak demands of aluminum manufacturers and other war industries in the valley, and it must import power from outside the valley."

great distress. This loss in taxes had such a profound effect on the revenues of local taxing bodies that Congress was forced a few years ago, over the protest of TVA supporters, to provide some measure of relief through increased TVA taxes and sums in lieu thereof. Yet, qualified experts repeatedly testified that adequate flood control could have been secured for the Tennessee valley through the expenditure of but $81,134,000, with maintenance costs around $400,000 annually.

Turning to navigation improvement, the twin of flood control in the major purposes of TVA, we find Mr. Duffus saying, on pages 96, 97:

> They [TVA's 21 dams] provide 650 miles of 9-foot river channel to Knoxville, all the year round. . . . They increased river traffic from 32,658,951 ton-miles in 1933 to 161,469,344 ton-miles in 1942, and this is a beginning.

According to TVA's 1944 annual report, some 194,000,000 ton-miles of freight were borne on the Tennessee river in 1943, while the loss from TVA's navigation activities, including depreciation, was $1,589,218. In addition the Army Engineers incurred expenses of some $350,000 in maintaining the 9-foot waterway, making a total net loss of close to $1,940,000 or about one cent per ton-mile for all the freight handled on the stream. This is more than the average per-ton-mile revenue received by all American railroads in 1943 and substantially more than their usual charge for the type of bulk freight carried on the Tennessee.

THIS $1,940,000 is, of course, just the operating loss incurred by TVA and the Army Engineers in navigation activities and does not include

interest on the public funds invested in TVA's navigation facilities. Using the same formula applied to flood control, the indicated investment in navigation works as of June 30, 1944, was in the neighborhood of $185,600,000, on which interest at 1.9 per cent would total $3,526,400. Add that to the out-of-pocket loss from navigation activities suffered by TVA and the Army Engineers, and you get a total cost to American taxpayers of navigation on the Tennessee of $5,466,400, or about 2.82 cents per ton-mile for every ton of freight carried on the stream.

Ton-mile traffic on the Tennessee has been sharply expanded as a result of wartime industrial activity in the valley, but it is worth noting that William M. Carpenter, Edison Electric Institute's economist, said in the July, 1936, *Bulletin* that if, instead of building the then-existing dams, the Federal government had bought and promptly destroyed every ton of freight presenting itself for passage on the Tennessee, the taxpayers of the nation would have been saved $2,700,000 in interest and out-of-pocket expenses alone.

MR. DUFFUS really went out on a limb in his discussion of the taxes and payments in lieu of taxes, which are part of TVA's operating costs. On page 65, he said:

> In 1938 the taxes or sums in lieu of taxes paid by TVA and its municipal and coöperative customers were just about equal to what private companies paid. By 1943 they were considerably greater than what the private companies had paid.

This is, at best, a half-truth. Neither TVA nor its municipal and coöperative customers pay any taxes whatever to the Federal government, although privately owned electric utilities handed to Federal tax gatherers a little more than one-sixth of all the dollars they received in 1944 from sales of electric energy. Even in 1938, when Federal taxation of private enterprise was much lighter than it was last year, the privately owned power companies of the country paid $110,000,000 in Federal taxes, or about one-eighteenth of their operating revenues. Had TVA and its power distributors paid Federal taxes in 1944 at the same rate paid by private power companies, its "taxes and sums in lieu of taxes" would have been increased by more than $5,500,000. Even in 1938, the Federal tax bill of TVA alone would have been nearly $127,000.

FROM another viewpoint, the statement that TVA's 1943 taxes and sums in lieu of taxes "are considerably greater than what the private companies had paid" smacks of dishonesty. TVA made its first purchase of privately owned electric utility facilities on June 1, 1934, when it acquired facilities located in and adjoining the northeastern corner of Mississippi from Alabama Power Company, Mississippi Power Company, and the Tennessee Electric Power Company. Since that original purchase, it has taken over practically every private power company in Tennessee, with the exception of a few small operations having combined 1944 operating revenues of around $2,500,000. The last major acquisition of private electric facilities was the purchase by TVA and its municipal and coöperative customers of the Tennessee Electric Power Company on August 15, 1939. And, obviously, once these utilities passed into public ownership, they

were no longer assessed by local taxing bodies.

Between 1938 and 1944, the combined state and local tax bills of the nation's privately owned electric utilities have increased 11 per cent, on the average, in dollar volume, although the percentage of operating revenues consumed by these exactions has remained constant. It is reasonable to assume, therefore, that if the private power companies acquired by TVA had remained in private hands, their state and local tax bills would have increased proportionately. TVA and its power distributors are, moreover, getting off light.

Their combined state and local taxes and sums in lieu of taxes during the 1944 fiscal year were equivalent to 71 mills for each dollar of operating revenues, or about 10 mills less than the average paid by private power companies in 1944.

MR. DUFFUS would have us believe, by implication since he has carefully avoided the matter of interest on the public funds employed, that TVA is paying its own way. Obviously, it isn't.

Not counting the World War I investment of $125,000,000 in facilities at Muscle Shoals which were given to TVA, the "proprietary interest" of the Federal government in TVA—the appropriations received by TVA from Congress and owed to the United States—stood at $622,147,000. In addition, TVA has borrowed $63,072,500 from the Reconstruction Finance Corporation and the Federal Treasury through the pledge of a like amount of its bonds. But aside from some interest on these loans, TVA has failed to compensate the Federal government for the annual cost of hiring the money it employs. In other words, while the Federal government taxed its citizens more than $13,820,790 during the 1944 fiscal year to pay interest on the $622,147,000 appropriated funds employed by TVA, the authority's entire net interest bill for the year—interest on its $63,072,500 of bonds, less interest received from municipalities and coöperatives on advances and loans—was but $621,579.

In addition, although $56,000,000 of bonds held by the Treasury call for interest at rates ranging from 1¾ per cent to 2½ per cent, the Treasury has "temporarily" reduced the rate to 1 per cent. And with the average cost of long-term money to the government standing at 1.9 per cent during the 1944 fiscal year, TVA failed by $508,500 to compensate the Treasury for

¶ "THE *360,000 acres of rich bottom land, on which abundant crops were grown in most pre-TVA years, not only are now out of cultivation for all time, but they have definitely been removed from the tax rolls of local governments to their great distress. This loss in taxes had such a profound effect on the revenues of local taxing bodies that Congress was forced a few years ago, over the protest of TVA supporters, to provide some measure of relief through increased TVA taxes and sums in lieu thereof.*"

interest paid in its behalf. Add that to the previously mentioned $13,820,790 of unpaid interest on appropriated funds, and you find that TVA failed by more than $14,324,290 to pay the hire of the money it employed during the 1944 fiscal year.

Some analysts have made the mistake of adding TVA's unpaid interest bill to the Federal taxes it did not pay, and proclaiming the total a subsidy from the nation's taxpayers. This is incorrect. TVA's net income from power operations in the 1944 fiscal year totaled $14,115,691, which losses from navigation activities, flood control, fertilizer production, and miscellaneous pursuits reduced to $6,581,628. But had TVA paid interest in full on all the public funds it employed, this consolidated net income would have been converted into a net loss of $7,842,660, and, in that event, it is doubtful whether TVA would have incurred any Federal tax liability on its 1944 operations, with the possible exception of the 3.3 per cent tax on electricity sold at retail. Nevertheless, no matter how you figure it, TVA has proved a financial flop and a taxpayers' subsidy since it was established twelve years ago.

Finally, on page 65, Mr. Duffus points to what the private power companies did to TVA when it was just a pup, and he does this, in part, by quoting from the Donahey Committee report, submitted to the House in 1938:

> The Commonwealth & Southern Corporation furnished $20,000 to a local citizens' and taxpayers' association for use in a campaign (at Chattanooga) preceding a referendum on the construction of a municipal distribution plant. The Tennessee Electric Company *(sic)*, a Commonwealth & Southern subsidiary, used its salesmen to canvass votes in the referendum, lent employees to the citizens' and taxpayers' association, and assisted financially a Chattanooga newspaper which editorially opposed public power.

But Mr. Duffus "forgot" to mention that TVA was not exactly "Ivory soap pure" during the same campaign. The Electric Home and Farm Authority, then the appliance-selling and financing agency of TVA, established headquarters at Chattanooga in May, 1934, with some fifty employees. On September 19th a local showroom was opened with a banquet, attended by a large delegation of TVA officials from Knoxville, and David E. Lilienthal as principal speaker paid glowing tribute to Chattanooga. Soon after the banquet, the local staffs of TVA and Electric Home and Farm Authority were quietly expanded. About a month before the referendum of March 12, 1935, announcement was made that Electric Home and Farm Authority was to be developed into a nation-wide agency employing 1,500 to 2,000 people, with the implication that Chattanooga was to become its national headquarters.

About three weeks before the election, TVA announced that surveys for determining the feasibility of building Chickamauga and Guntersville dams in the Chattanooga area, the construction of which would have stimulated Chattanooga's trade, would be undertaken at once. And about five days before the election, it was announced that power from Norris dam would be available to Chattanooga consumers in fifteen months.

All steamed up by this carefully timed propaganda, the citizens of Chattanooga voted overwhelmingly for municipal ownership.

THEN came what may be called the "pay-off in reverse." No sooner were the results of the referendum made known than Electric Home and Farm Authority employees began drifting out of town. Announcement was made on August 31st that its Chattanooga headquarters were to be abandoned. By November 13th, not only was the Chattanooga showroom vacant but only two Electric Home and Farm Authority employees remained in the city. There was no need of more; the Chattanooga referendum had been "put over."

As Mr. Duffus has repeatedly emphasized in his book, TVA has contributed substantially to the economic and social well-being of the Tennessee valley. But why shouldn't it have done so? Since May of 1933 it has spent in the neighborhood of $700,000,000 in a region of some 60,000 square miles, which is less than the area of Missouri. And regardless of the merits or economic justification of its construction and development activities, the expenditure of so vast a sum in so limited an area was bound to be reflected in increased business activity and a higher standard of living for its people. Particularly is this true of a project which failed by more than $14,300,000 to pay the hire of the capital which it employed during the 1944 fiscal year.

Even the $7,000,000 which Mr. Ickes, as PWA Administrator, squandered during 1935 on the Passamaquoddy tidal power project brought some measure of increased prosperity to that section of Maine in which the money was spent.

Mr. Duffus mentioned that 80 per cent of TVA's power "is going to war," and therein may lie the reason for the marked step-up in TVA's propaganda output since 1941. Perhaps it is doing its best to sell itself to the American taxpayers as a successful undertaking while the going is good, and before transition from a wartime to a peacetime economy reduces industrial demands for its power, and its so-called profits begin to slip.

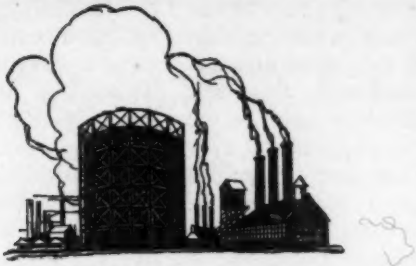
Executive Pay

"A RECENT *study of executive remuneration by the National Industrial Conference Board turned up some interesting conclusions. Executive pay was worked out as a percentage of the sales dollar and great variation was found by industries. Moreover, it was revealed that small company executives draw more than their fellows in the big companies.*

"Topping the list of 407,053 companies in 1941 were executives of automotive repairs, service, and garages, who received 6.6 per cent of sales. Printing and publishing pays out 4.4 per cent of sales to executives. Steel offers a mere 1.4 per cent, and automobiles .4 per cent.

"Some group percentages follow: retail trade, 2; wholesale trade, 1.7; total manufacturing, 1.5; public utilities, .9; and amusement, 2.8."

—EDITORIAL STATEMENT,
Nation's Business.



Is Gas Pressure Regulator A Local Facility?

An interesting question of fact which, as the author points out, is a fundamental inquiry affecting the jurisdiction of the Federal Power Commission under the Natural Gas Act.

By BENJAMIN MILLER

THE authority of the Federal Power Commission to regulate the accounting of companies which distribute natural gas may depend upon the answer to the question, "Is a pressure regulator a local distribution facility, or is it a facility for interstate transportation?" And the question seems to be one of fact, and not of law. Such, at least, is the apparent teaching of the United States Supreme Court in the case of the Connecticut Light & P. Co. *v.* Federal Power Commission,[1] decided March 26, 1945.

In this case the company purchased electrical energy at 66,000 volts from an unaffiliated concern. It transforms this energy to 4,600 and 13,800 volts by means of a substation, and then transmits the energy over many circuits to consumers. The Federal Power Commission held that the substation was a facility for the transmission of electric energy as distinguished from the local distribution thereof, and that this made the company subject to its jurisdiction, and the court of appeals sustained the commission, but erroneously, as the Supreme Court interpreted the law. The situation seems to be exactly analogous to a situation where a local gas-distributing company buys gas at pipe-line pressure from an interstate transporter of natural gas, then reduces the pressure and transmits the gas at reduced pressure to its customers. In fact, the commission in its opinion cited two previous United States Supreme Court cases which involved natural gas transportation into a state and sales of gas at retail therein.[2] In these cases the sales within the state

[1] 58 PUR(NS) 1, 65 S Ct 749.

[2] Southern Nat. Gas Corp. *v.* Alabama (1937) 301 US 148, 81 L ed 970; and East Ohio Gas Co. *v.* Tax Commission (1931) 283 US 465, 75 L ed 1171.

were said by state-taxing authorities to be intrastate business, while the companies contended they were in interstate commerce and hence there was not state jurisdiction to tax. On the basis of these cases, it appears, the Federal Power Commission announced and applied a rule of law which, the Supreme Court said, excluded from the business of local distribution the process of reducing energy from high to low voltage in subdividing it to serve ultimate consumers; and by thus excluding the substation from the category of facilities used for local distribution seemed to nullify the exemption from Federal Power Commission jurisdiction which Congress had put into the Federal Power Act. But this is an erroneous view of the law established by the decisions in the Southern Natural Gas Corporation and East Ohio Gas Company cases. In both cases it was held that the distribution of gas at low pressure to consumers is a local business, but this was not a holding that the process of reducing it from high to low pressure is not also part of such local business. Indeed, in neither case was it necessary to determine the exact point at which interstate commerce ceased and intrastate began.

OF course there is some difference between the wording of the Natural Gas Act and the Federal Power Act, but to a layman the intent of Congress seems, in both cases, to have been that the regulation of local companies be left in state control.

Section 201(b) of the Federal Power Act, which has been construed in this case, says: "The commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this part and the part next following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter." Section 1(b) of the Natural Gas Act says: "The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas." Concerning the Federal Power Act the Supreme Court said: "It does not seem important whether out-of-state energy gets into local distribution facilities. They may carry no energy except extrastate energy and still be exempt under the act. The test is whether they are local distribution facilities. . . . The order must stand or fall on whether this company owned facilities that were used in transmission of interstate power and which were not facilities used in local distribution."[3]

SUBSTITUTE "natural gas" for "energy" and "power" in this quotation and the result is that a local dis-

[3] Connecticut Light & Power Co. *v.* Federal Power Commission, *supra*, 58 PUR(NS) at p. 11.

Need for Checking Pressure Regulators

". . . both pipe-line companies and distribution companies should check the operation of their pressure regulators to determine whether they are being used in interstate transportation alone, or in interstate transportation and local distribution as well. . . . It therefore behooves all companies handling natural gas produced in one state and consumed in another to give careful study to all their facilities which may be used in local distribution."

tributing company is not subject to Federal Power Commission jurisdiction even though out-of-state natural gas flows through its facilities, provided all of such facilities are used in local distribution of gas. This may be true even though gas is sold to other local distributing companies for resale, for the Connecticut Light & Power Company "serves 107 towns, cities, and boroughs of Connecticut with a total population of about 660,000 and in addition supplies substantially all the power used by local companies which serve communities of Connecticut having a population of 130,000."[4]

The Supreme Court did not undertake to decide whether the substation was or was not used in local distribution, because it is for the Federal Power Commission to find the facts. Presumably, therefore, it would be for the Federal Power Commission to find whether a pressure-reducing station is or is not used in local distribution. But the Supreme Court pointed out that such a finding must be supported by substantial evidence, not only "Expert testimony received by the commission on the subject from the commission's own experts . . . predicated upon the commission's understanding of the law."[5]

IN the dissenting opinion, which stated that the commission's order should be upheld, it is pointed out that the "precise dividing line between interstate transmission and local distribution can only be drawn by those familiar with the engineering and electrical problems involved,"[6] and that "no opinion in this court has purported to decide at what precise point interstate transmission of

[4] 58 PUR(NS) at p. 5.

[5] 58 PUR(NS) at p. 13.
[6] 58 PUR(NS) at p. 17.

electrical energy ends and local distribution commences."[7]

But the majority opinion, however, makes it clear that as an engineering matter there is no dividing line —"Technology of the business is such that if any part of a supply of electric energy comes from outside of a state it is, or may be, present in every connected distribution facility. Every facility from generator to the appliance for consumption may thus be called one for transmitting such interstate power. By this test the cord from a light plug to a toaster on the breakfast table is a facility for transmission of interstate energy if any part of the load is generated without the state."[8]

Though gas is material, and electricity is not, as a practical engineering matter it would be equally correct to say that if any part of a supply of natural gas comes from outside of a state such out-of-state natural gas may be present in every connected distribution facility, and every facility from the producing well to the appliance burner is a facility for the transportation of natural gas in interstate commerce if any part of the gas burned in an appliance came from a well in another state.

It therefore appears that Congress could have given the Federal Power Commission jurisdiction over every local gas company which handles gas produced in another state. While electrical energy was the subject of discussion, gas could as well have been where the Supreme Court said: "It has never been questioned that technologically generation, transmission, distribution, and consumption are so fused and interdependent that the whole enterprise is within the reach of the commerce power of Congress, either on the basis that it is, or that it affects, interstate commerce, if at any point it crosses a state line. Such a broad and undivided base for jurisdiction of the Power Commission would be quite unobjectionable and perhaps highly salutary if the United States were a unitary government and the only conflicting interests to be considered were those of the regulated company.

"But state lines and boundaries cut across and subdivide what scientifically or economically viewed may be a single enterprise. Congress is acutely aware of the existence and vitality of these state governments. It sometimes is moved to respect state rights and local institutions even when some degree of efficiency of a Federal plan is thereby sacrificed. Congress may think it expedient to avoid clashes between state and Federal officials in administering an act such as we have here. Conflicts which lead state officials to stand shoulder to shoulder with private corporations making common cause of resistance to Federal authority may be thought to be prejudicial to the ends sought by an act and regulation more likely to be successful, even though more limited, if it has local support. Congress may think complete centralization of control of the electric industry likely to overtax administrative capacity of a Federal commission. It may, too, think it wise to keep the hand of state regulatory bodies in this business, for the 'insulated chambers of the states' are still laboratories where many lessons in regulation may be learned by trial and error on a small scale without

[7] 58 PUR(NS) at p. 16.
[8] 58 PUR(NS) at p. 10.

involving a whole national industry in every experiment."[9]

But Congress intended to limit the jurisdiction of the Federal Power Commission over the electric industry, to exempt from that jurisdiction companies whose facilities were used in interstate transmission of electrical energy if those facilities, all of them, were also used in local distribution, and to place under the jurisdiction of the Federal Power Commission only those companies which had facilities which were used in interstate transmission but were not used in local distribution. And if the substation used to transform from high voltage suitable only for transmission to lower voltage suitable for local distribution is not used in local distribution, then it may be that it is used only in interstate transmission, in which case the Federal Power Commission has jurisdiction over the substation as well as the company which employs it.

If the Federal Power Commission finds as a fact that such a substation is not used for local distribution, and is used for interstate transmission, then its jurisdiction may be based on that finding. If the finding is supported by substantial evidence, it is conclusive.

So in the natural gas industry, where the local company receives gas under a high pressure suitable only for transmission, and reduces the pressure to that suitable for local distribution, the question will be: "Is the pressure regulator used only in interstate transportation of natural gas, or is it used also in local distribution of natural gas?" The answer is a fact, to be found by the Federal Power Commission. It would seem that the answer will not always be the same, and that in each case there must be an engineering study, on which expert testimony can be based and offered to the FPC.

While the discussion has been concerned with the jurisdiction of the Federal Power Commission over local companies, it must not be forgotten that the jurisdiction of states over interstate companies is also involved. If the interstate company owns or operates a pressure regulator, and if the pressure regulator is being used in local distribution, both a state and the Federal Power Commission may have jurisdiction over the company with regard to accounting matters, for § 8(a) of the Natural Gas Act provides: "That nothing in this act shall relieve any such natural gas company from keeping any accounts, memoranda, or records which such natural gas company may be required to keep by or under authority of the laws of any state."

Thus both pipe-line companies and distribution companies should check the operation of their pressure regulators to determine whether they are being used in interstate transportation alone, or in interstate transportation and local distribution as well.

And while the facility which the Connecticut Light & Power Company operates which may subject it to Federal Power Commission regulation is a voltage-transforming substation, and while the analogous facility in the natural gas industry is a pressure-reducing station, the laws speak only of "facilities." It therefore behooves all companies handling natural gas produced in one state and consumed in another to give careful study to all their facilities which may be used in local distribution.

[9] 58 PUR(NS) at p. 10.

On Staying in Business

Some thoughts which the author believes should be of abiding interest to the owners and managers of the privately owned electric industry.

By FREDERICK H. McDONALD
DIRECTOR, COMMUNITY RESEARCH INSTITUTE

When the Community Research Institute several years ago began its studies of the elements that control the progress of communities, we developed facts that have led us to recent findings on the electric utility industry which may point to the solution of your most critical problem —the survival of private ownership.

Basically, we found that communities are the functional units of which states, regions, and nations are formed; and that the progress of communities is dependent upon their occupational income and payrolls. Hence, it is obvious that the progress of any area can be assured by promoting the growth of the income and the payrolls in each of its communities.

When we set out to identify a logical agency which might undertake such a community responsibility, we successively discarded political and volunteer units, because they all lack the factual outlook and the continuity that are essential to realistic programs. This brought us to corporate enterprise; and we found that the electric utility is the one enterprise that touches every activity—because everyone is its customer—and that it has ample justification for promoting the progress of its territory. We also found that the private utility is a quasi public institution, already dedicated to public service. And we began to wonder why the electric utility has not stepped out everywhere as the explicit promoter of the economic advancement of the communities it serves.

In fairness, we have found a number of utilities that do have this purpose behind activities they foster. But, mostly, we have found that the electric companies are wary of undertaking even constructive activities openly, for fear of public suspicion of their motives. In fact, most utilities sense such a growing attitude against their profitable operation, that their executives live in a Gestapo atmosphere of being constantly "on the spot"; and when they do contribute to the welfare of the community, they do it silently and through

other agencies. Then we undertook to find why the electric utility is in the public "doghouse"—why it has failed to gain popular support for its private operation, as against public ownership.

THAT, of course, is the essence of the problem of public relations. I know that many of you who read this have been spending effort and money to gain just that kind of good will. But I suggest that it is time for you to audit your status and to determine if the methods now being accepted as good practice will insure your staying in business. And before you let your hackles rise in what you feel is a righteous indignation, let's take a look at the picture.

Viewing the industry as a whole, do you know of any electric companies that are certain they will not face militant movements to reduce rates, regardless of justification, as soon as the tacit armistice which the war has put on this practice begins to melt away? How many systems do you know of that are not facing new movements for public power in or adjacent to their territory, in the form of river valley authorities, flood and power dams, municipal plants, and electric coöperatives that are only waiting for the war to end? Or, considering the units of public power already in operation—even though they have been foregoing competition for the "duration"—how many do you think will not go "hog wild" in appropriating loads from their adjoining utilities, to justify capacity that will be idle after the war is over? Perhaps, also, you know of a locality or two where public ownership is already moving toward the purchase or the condemnation of private systems? Finally, getting closer home, is your own system free of these shadows?

Unless you can give a whopping "No!" to those questions, then the answer is one that many in the industry are frankly aware of, and many more are beginning to realize—the electric industry is losing ground steadily as a field for private enterprise. This is happening in spite of the millions of dollars being spent under the prevailing concepts of "how to gain good will."

THOSE ought to be impossible conclusions in a nation where the benefits brought to the public by private enterprise can be charted in a graphic measure of rising values at lower prices. It is a heart-breaking slap at the electric industry which has the outstanding record of a steadily downward slope of prices over its last quarter of a century of operation.

Yet, unless you honestly believe that "compromise" will be the miracle that will *permanently* stop these movements against private operation, it looks as if there must be factors in public psychology which still have to be counteracted, if private enterprise is to stay in business in the electric utility field. It is to those factors that I and my associates have directed our studies. We are confident we have identified them and that we have found remedies that are practical because they are a natural evolution of your industry's character as an institution of public service.

Without going into the details of our research or the processes by which we arrived at solutions, we will deal here only with conclusions.

So far, the electric industry has been trying to sell the public on the merits of private ownership by way of local

Merits of Private Ownership

". . . the electric industry has been trying to sell the public on the merits of private ownership by way of local and national advertising, radio entertainments, and some extra services from company personnel, all stressing the general idea that private ownership will give a better service and a constantly cheaper product. These appeals have been based on A FALSE PREMISE AND ON A FALSE IMPLICATION OF FACT."

and national advertising, radio entertainments, and some extra services from company personnel, all stressing the general idea that private ownership will give a better service and a constantly cheaper product. These appeals have been based on *a false premise and on a false implication of fact.*

Your false premise is in the assumption that the public is the source of its own opinion, and that logical appeals in behalf of private enterprise will shape the opinion of the public to favor private ownership. Actually, it is what you do, and not what you or others say, that shapes public opinion about you.

In other words, you have to look to yourself—your utility is the cause and the source of public opinion for or against you. Actions still speak louder than words. So much for the false premise.

THE false implication of fact is that your claim of constantly lowering prices implies that you will serve the public more cheaply than public ownership. The fact is that wherever it occurs, *public power always undersells its competing private utility—regardless of costs.* Never mind the questions you are quite justified in raising on the indirect costs of taxes; the inadequate allocation and the plain writing-off of investments; and on political *versus* experienced management. The fact is that when monthly bills are compared, you find the source of public opinion. As far as the public is concerned, public power is cheaper. So much for your false fact, as it registers with the public.

We consider that these conclusions point to two precepts: You do not have to advertise for good will if your actions are accepted as being in the pub-

lic interest; and it is useless to advertise for good will if the public believes it has evidence that your actions are not in the public interest.

Of course you can say, and fairly, that you can make a rational showing that the actions of the private utility are in the public interest, and that you are trying to prove that very point through advertising, because the public does not realize the merits of your case. Our answer is that you are ignoring the message in that monthly bill—the bill of the private utility is still higher than the bill for public power. As far as the public is concerned, the deeds of public power speak for themselves in the basic appeal to human nature. That appeal offers more folding money to the pocketbooks of the public!

We are convinced that until private enterprise meets the public with that identical appeal in the electric industry, that you will never halt the movements for rate reductions, for river valley authorities, and for the public ownership of your business.

CAN you do this? We think you can. The answer does not lie in competitive rate reductions. Public power will progressively undersell the utilities and you will ruin yourselves in rate reductions that have no bottoms.

But we think you can make a regular *business* of developing new benefits in *a new public service* that will be gainful to the public in ways beyond what your customers get from the electricity they buy from you. We think there are also certain truths which are advantageous to the utilities and to the public which can be convincingly demonstrated in regular operations. We believe that wherever these combined proofs of greater benefits are earnestly given in practice, these *actions* will gain preference and support for private ownership. We can see no substitute for that principle.

As the basic new service, we suggest that your company would find it logical and profitable to organize *public programs* to promote the economic advancement of all the communities you serve.

By this we do not mean the hiring of more operatives to demonstrate more profitable uses for electric equipment.

We do not mean just adding new personnel in the form of agricultural, industrial, cooking, or home economics advisers, who will make periodic visits to communities or to customers. Nor do we mean the mere spending of money for radio programs or advertisements or elaborate publications, which talk of community service. We mean the down-to-the-earth, factual working out of *scientifically designed procedures that will actually create new income and new payrolls in coöperation with the citizens of every community you serve.* You can do this; and when you make it a fact, you can meet the argument for public power without reducing your rates—because you will put more money in the pocketbooks of your public!

SUCH a service will meet for you the great limitation on your operations —the fact that increases in load and in revenue must come from within the limits of your system. This new service will intensify the internal growth of your territory and it will develop an increasing purchasing power, of which you will get an automatic share of each

added dollar. We think this new public service can be organized and implemented as a logical extension of your franchise to render a public service, and that it would be reasonable to expect that its costs would be quickly recognized by taxing and by regulatory authorities as a justifiable and allowed charge against your revenue, before income taxes and before your allowed rate of return. Thus, not only will this service increase your gross revenue, it will not reduce your net earnings.

Many of you have recognized the principle of this service; and some are doing excellent jobs under it. But are you doing it *in partnership with the public?* You will know that your efforts are successful and that your business is safe when you can count upon *your customers* to demand your service and to join with you in fighting unwarranted attacks on your rates or against movements for the public appropriation of your business.

But if you do not feel this confidence in your safety, it is high time to go after it. We do not believe there is any other way your company can so firmly establish its essentiality than by becoming publicly recognized as *the agency that makes a business of actually increasing the prosperity of every community you serve.* Why shouldn't the public demand that kind of service—and defend it?

To gain this recognition, the job must be done well and *in your name*—the honored custom of doing good works silently must be abandoned in favor of the bold and persistent identification of your company with the operations of every beneficial service you contrive. It is time to fire up in the public interest—to shuck the bushel basket and let your light shine forth!

More Government Spending?

"THE war has created a situation under which the great bulk of industry is now directly or indirectly dependent on government orders. The unthinking have come to regard this as a normal situation. Jobs cannot be maintained, they suppose, unless the stoppage of government war orders is immediately followed by government peace orders. If their supposition were right, the peace orders would have to equal the war orders, and we should have to keep up government spending at the same fantastic level that we must maintain in war."

—EDITORIAL STATEMENT,
The New York Times.

Government Utility Happenings

An investigation, headed by Representative Boren (Democrat, Oklahoma), appears to be the outcome of the attack delivered in the House of Representatives on July 6th by the Oklahoma legislator. Boren condemned the sale of utility subsidiary interests by holding company systems to ostensible public ownership groups at allegedly inflated prices, resulting in large fees to promoters and other special interests. He criticized various banking interests, property sales promoters, and some holding company managements. Boren's remarks evidently impressed the House Interstate and Foreign Commerce subcommittee, which on July 10th, in executive session, authorized the investigation.

Two years ago Boren sponsored a resolution (HJ Res 140) to suspend operation of the "death sentence" for the duration. This year he introduced a bill (HR 672) to restrain the Federal Power Commission from encroaching on the jurisdiction of the state utility commissions (not acted upon).

It was the recent sale of Nebraska Power Company stock that was Boren's principal target. He charged that the stock was "unloaded" by its holding company owners (required to dispose of such control under the Holding Company Act) to a committee of Omaha citizens who plan to turn over the property to the city at a fancy figure, netting handsome returns for the parties concerned, notably Guy C. Myers, well-known public ownership promoter. He observed that the law as it now stands makes such procedure legal and added that a similar widespread plan is under way for systematic acquisition of utility properties by "fake public ownership" outfits, picking up utility properties orphaned by holding companies under the Federal Act. He mentioned properties in Louisville, Cincinnati, and the Bonneville area as likely prospects for such treatment.

Notwithstanding the sensational charges, which gave utility and banking circles alike reason for some concern, it is not clear just what purpose the Oklahoma Congressman has in mind—beyond the immediate aim of starting an investigation. Already a member of the Securities subcommittee of the House Interstate and Foreign Commerce Committee, Boren was appointed, along with Representatives Murphy (Democrat, Pennsylvania) and Reece (Republican, Tennessee), to make an investigation with a view to tightening up the Holding Company Act. Some special funds were necessary to make the investigation effective, but it was regarded as likely that they would be forthcoming because nobody appeared to oppose such an investigation.

Representative Buffett (Republican, Nebraska) and Governor Griswold of Nebraska, while deploring Boren's extreme remarks about Nebraska citizens, welcomed an inquiry, as did leading parties to the Omaha deal. There is some speculation that Boren's probe, if it gains notice, may result in a recommendation to eliminate tax-exempt features of public agency securities used to finance utility property acquisition where the deal does result in bona fide public ownership operation. This suggests the Carlson Bill (HR 2014), already pending, to curb municipal tax exemption in financing utility property acquisitions through revenue bonds where bona fide

public operation of properties does not result.

At his home in Lakeville, Connecticut, Howard L. Aller, president of the American Power & Light Company, made the following statement:

> I am not in sympathy with the socialistic trend evidenced by the spread of public ownership of electric utility properties. We have in no instance either formulated a plan for or initiated a transaction involving the sale of properties of our subsidiaries to any public power group. We have been forced by circumstances entirely beyond our control to sell to public bodies certain properties in Texas several years ago and in Nebraska last December. . . .
>
> With exception of Nebraska Power Company, all the privately owned electric utilities in Nebraska were sold to public bodies more than three years ago. Effort was made, beginning in 1937, to compel our company to dispose of our interest in Nebraska Power Company to some public body. At that time J. D. Ross, formerly a member of the SEC and prior to that time manager of the municipal electric utility in Seattle, Washington, called on me accompanied by Guy C. Myers of New York and stated that he had been sent by an important person in the administration to endeavor to induce us to dispose of our interests in Nebraska so that all of the utility properties in that state might be publicly owned. He stated that he was prepared to pay a price for the property of $45,000,000. This price would have yielded an amount for the common stock somewhat in excess of the amount we received last December. Mr. Ross stated that this price was offered with the full knowledge and approval of his principals in Washington. Upon our refusal to sell our interest, a 6-year controversy ensued, during the last two years of which the newspaper in Omaha led the forces for public power endeavoring to destroy the values inherent in the efficiently operated and locally popular Nebraska Company.
>
> During this period an offer was made to us for our interest in Nebraska Power Company by the Consumers Public Power District, a public body of Nebraska, and also an offer was made by a "panel" of Omaha citizens, appointed by the mayor of Omaha, created to acquire the property of Nebraska Power Company through the medium of a nonprofit corporation. In addition, an offer was made to us by the peoples power commission of Omaha, a public power district created by the legislature of Nebraska in 1943.
>
> All of these offers were in the same amount; that is, they were computed from the same formula. This same price formula was employed last December when we sold our interest to the Omaha Electric Committee, a nonprofit corporation.
>
> Due to several lawsuits which prevented the peoples power commission of Omaha from functioning, certain of the commissioners of that body, who were appointed by the governor and the mayor of Omaha, became the organizers of this nonprofit corporation, called the Omaha Electric Committee, Inc. This company purchased from us the common stock of the Nebraska Power Company and the organizers made public statement at the time that their sole purpose was to turn the property over to such public body as would be empowered to own and operate it. New legislation, enacted by the Nebraska legislature in the spring of 1945 without a dissenting vote, made possible the creation of a public power commission with power to acquire and operate these properties, and such a body is in process of being organized.
>
> It is obvious that to socialize the electric utility industry, through acquisition by public bodies which are instrumentalities of the United States or by any of the several states or their subdivisions, causes the loss of income taxes to the Federal government. Congress alone can remedy this socialistic trend. No cure for the trouble can be found in vituperation or by making false charges against the utilities, investment bankers, or the investing public who are seeking tax-free investments. This trend to socialism can only be reversed by legislation which will tax all publicly owned utilities equally with the privately owned utilities.

Replying to Boren on the floor of the House, Representative Buffett explained that the Omaha deal resulted from efforts by Omaha citizens going back several years to take over control of the properties of the Nebraska Power Company when they learned of the likelihood that the parent holding company—American Power & Light—would have to dispose of its holdings in the Nebraska Power Company in order to comply with the Holding Company Act. Mr. Buffett continued, in his statement in the House on July 9th: "Immediately, public-spirited citizens became active in efforts looking toward the acquisition of Nebraska Power by the city of Omaha."

The committee, he explained, now functions "as a temporary vehicle to bridge the gap between private and public ownership" and meanwhile the property is paying full Federal taxes.

"Whether the price paid was high or low, it was the Federal government that

is largely responsible for the legal obstacles and trick hurdles used by the seller in making difficult the consummation of public ownership," the Congressman added.

Governor Griswold said he did not know what the property was worth and doubted that Mr. Boren was "any more qualified than I to pass an opinion along that line." The governor said a congressional investigation of the sale would be all right with him.

A REPERCUSSION of the Boren charges was heard in Philadelphia on July 9th when officials of Louisville, Kentucky, were charged with attempting to drive down the value of utility common stock before the Securities and Exchange Commission. The charge was made by George C. Mathews, vice president of Standard Gas & Electric Company, and himself a former member of the SEC. The hearings were on the proposed disposition of the Louisville Gas & Electric Company, a subsidiary of Standard. Mathews accused Mayor Wyatt of Louisville of using threats of litigation and publicity to drive down the value of the Louisville common stock, ostensibly for the purpose of ultimate purchase by the city at distress price. The city is seeking to buy and operate the properties under a municipal utilities commission. Counsel for the operating utility asked to have the recent statement in the House of Representatives by Representative Boren included in the record of the SEC.

* * * *

THE long-drawn-out Hetch Hetchy dispute has been settled. Last month the U. S. District Court and Secretary of Interior Ickes approved a contract for the sale of Hetch Hetchy power by the city of San Francisco to the Modesto-Turlock Irrigation districts. The contract contains an amendment which specifies the districts will not resell Hetch Hetchy power to any privately owned utility company. This was regarded by Ickes as complying with the Raker Act of 1913, which forbids the sale of public power from the Hetch Hetchy project through any but public agencies. Ickes previously had ruled that other power contracts with the city, with magnesium and cement plants, and also with the Aluminum Company of America and Pacific Gas and Electric Company as the buyer of "dump power," constituted "technical compliance" with the Raker Act.

The Hetch Hetchy contracts will bring annual revenue amounting to $2,000,000 to the city, representing a loss of about $175,000 a year, as compared to the city's previous contracts for the sale of Hetch Hetchy power to Pacific Gas and Electric, which were outlawed in the Federal courts. The city will pay PG&E about $700,000 for the use of its distribution facilities within the city in order to supply its own power to its railway system and public buildings. Net result of the contract, however, does not require the city to go into the electric utility business and does not commit its officials to agitate for another public ownership election, as previously demanded by Interior Department officials.

* * * *

CONGRESS finally disapproved Central Valley line funds in the recently enacted Interior Department Appropriation Bill. This came in the form of action by both houses approving the conference report which threw out funds which would have permitted preliminary work on transmission lines and steam plant by the Reclamation Bureau to bring Shasta-Central Valley power into the San Francisco area. The amount of these two items was relatively small.

Two notable factors in congressional defeat of the Central Valley proposal were: (1) The spirited debate put on by the California delegation in the House, even after a conference committee had killed the proposal, indicates that the "public power bloc" is still very well organized in the lower chamber of Congress. (2) Offsetting effect of the public power bloc, to some extent, appears to be a determination on the part of the House Appropriations Committee to restrict the Interior Department's authority to dispense unexpended balances in any man-

ner not specifically approved by the House.

This probably stems from previous experience with the Interior Department's failure to abide by the wishes of the House (in building lines without congressional approval). In three different provisions of the recently enacted bill, the conference committee took care to write in language restricting Interior's use of unexpended funds to projects specifically approved by Congress.

* * * *

INCREASED appropriation for rural electric loans was finally approved in both branches of Congress in passing the Second Deficiency Appropriation Bill (HR 3579). This bill provides funds for REA loans in the amount of $120,000,000 for the coming fiscal year. It also carries an extra item of $650,000 for REA administration expenses. These REA funds are in addition to the $80,000,000 already approved in the Agriculture Department Appropriation Act last June, making a total of $200,000,000 available for REA loans during the coming fiscal year.

* * * *

PROPONENTS of a Missouri Valley Authority in the valley's ten states welded themselves into a permanent organization last month and immediately called for a 1,000,000-signature petition campaign designed to win quick consideration by Congress. With Wyoming the only basin state not represented, the conference elected former Montana Supreme Court Justice Leif Erickson as president; Raymond R. Tucker, professor of mechanical engineering at Washington University, St. Louis, as vice president; and John E. Wetzig, business manager of Local 124, AFL International Brotherhood of Electrical Workers, Kansas City, as treasurer.

Executive committee members nominated by their respective states and approved by the committee as a whole were: John Connolly, Jr., Des Moines, Iowa, attorney; Henry Mundt, Sioux Falls, South Dakota, attorney; Floyd Black, Topeka, secretary of the Kansas State Federation of Labor; Charles Graham, Denver, attorney; Sylvester Graham, regional CIO director at Helena, Montana; Gaylord Conrad, editor of the *Bismarck* (North Dakota) *Capital*; Roy N. Towl, Omaha city commissioner; and Henry Pedersen, Guide Rock, Nebraska.

* * * *

ONE of the largest orders for transmission line materials, including conductor and line hardware, ever placed by the Bonneville Power Administration has been awarded to the Aluminum Company of America, according to an announcement made on June 30th by Bonneville Power Administrator Paul J. Raver.

Low bidder out of four companies, Alcoa's contract calls for delivery of some 1,276 linear miles of conductor in three sizes. Aggregate price asked by Alcoa on three separate bids was $559,956.86.

High bidders for the contracts were the Anaconda Wire & Cable Corporation, General Cable Corporation, and Phelps-Dodge Copper Products Corporation.

* * * *

THE portion of the government's $112,034,352 capital investment in the Bonneville hydroelectric project in Washington and Oregon as of July 1, 1944, to be allocated to power, and to be recovered out of electric revenues, has been fixed by the Federal Power Commission at $86,128,370 in an order accompanied by a report of its chief engineer. The FPC has determined that (1) the cost of Bonneville facilities having value solely for power purposes is $37,681,648; (2) the cost of transmission facilities constructed under the Bonneville Act is $28,324,922; and (3) the cost of facilities having joint value for the production of electric energy and other purposes is $40,243,727, of which $20,121,800 is allocated to electric facilities.

Commissioner Nelson Lee Smith, in a 36-page dissenting opinion, criticized the commission's majority order and the chief engineer's report.

Wire and Wireless Communication

RADIO, "by its very nature, must be maintained as free as the press," President Truman said in a letter made public by *Broadcasting* magazine last month. The letter to Sol Taishoff, editor and publisher of the trade journal, was included in a copyrighted article marking the twenty-fifth anniversary of radio's operation on a regular schedule.

"Our lawmakers demonstrated admirable foresight," the President observed, "by decreeing that America, as the birthplace of radio, should have a free, competitive system, unfettered by artificial barriers and regulated only as to the laws of nature and the limitation of facilities."

The President declared that "the American system has worked and must keep working. Regulation by natural forces of competition, even with the obvious concomitant shortcomings, is to be preferred over rigid governmental regulation of a medium that by its very nature must be maintained as free as the press."

* * * *

SENATOR McFarland, Democrat of Arizona, on July 11th called for an independent, world-wide American communications system as an implement toward achievement of world freedom of the press. Such a system also was necessary if American commerce and business were not to operate at a disadvantage in the postwar world, the Senator said in a statement.

Mr. McFarland, a member of the Senate Interstate Commerce Committee, recently visited Europe with Senators Wheeler of Montana and Capehart of Indiana to study communications. The survey, he said, confirmed his opinion that "there can be no adequate freedom of news in the world without an effectively unified American communications system." He stated:

> I am a firm believer in the creed so ably expressed by Kent Cooper of the Associated Press, Hugh Baillie of the United Press, and numerous outstanding newspaper publishers that freedom of news—the right to send news everywhere and the right to pick up news everywhere without artificial restraints—would be one of the greatest deterrents to war.
>
> We shall not achieve that goal by declarations in peace treaties alone—it must be implemented by a vigorous and practical policy of establishment of a free, strong, and independent American communications system operating all over the world.

Mr. McFarland added that it appeared clear that if such a system could not be speedily established, other steps would have to be taken.

"It has been suggested, for example," he continued, "that the Army and Navy systems, now virtually world girdling and unquestionably the finest in the world, be used at least temporarily as a basis for a world-wide system which would be under American control."

Regarding the great networks of communications and transport systems which she had thrown up over the world, America should "exercise immediately a fair, equitable but hardheaded diplomatic policy for our own advantage," Mr. McFarland argued. "To lose all that, either by yielding our hard-won rights, or to give it away or junk it, would be

a colossal blunder for our own interests and outrageously unfair to the taxpayers."

* * * *

THE National Telephone Commission of the National War Labor Board on July 10th unanimously awarded increases from $2 to $4 a week in the starting rates and $5 to $7 in the maximum rates for approximately 4,500 female nonsupervisory employees in the traffic department of the Wisconsin Telephone Company.

Under the adjusted wage schedules, the starting rate for the city of Milwaukee will be $21 a week and the maximum rate, after ten years' service, will be $52. The starting rates for all other exchanges were increased to $20 a week and the highest maximum rate, reached after nine years, was increased to $50 a week.

In connection with granting the wage increases, the commission also reduced the length of time required to reach the maximum salary, which will vary from five to ten years, depending on the locality. The progression schedules had previously varied from eight to as long as sixteen years, which prevailed in Milwaukee.

The company, which is part of the Bell system, furnishes local and long-distance service in Wisconsin. It has offices in 97 cities and towns throughout the state.

* * * *

THE Southern Bell Telephone & Telegraph Company was ordered early last month to reduce intrastate long-distance telephone rates to a level with interstate tolls.

Contending that the company's two sets of rates constitute discrimination against Tennessee users, the state railroad and public utilities commission ordered the concern "to revise tariffs to correct all discrimination, either reducing the intrastate toll rates to the interstate level or otherwise making the rates conform."

The commission instructed the company to file revised tariffs by October 31st and set the deadline for inauguration of the new tolls at November 1st.

Commissioner Leon Jourolmon, Jr., said the action would save long-distance users in Tennessee approximately $300,000 a year and would cost the company profit losses amounting to $41,881. The company's rate of return on long-distance investment will be reduced from 10.43 per cent to 9.36 per cent.

The telephone company contended in the lengthy litigation, a renewal of an action first started in 1941, that the rate reduction would further deflate profits already seriously affected by increased labor and operating costs and by previous rate reductions. The company requested the commission to increase telephone subscription rates if the long-distance tolls were lowered.

"We find no reason," said the commission's order, "to increase local exchange rates. Local exchange rates will remain unchanged."

In explanation of the rate decrease, the commission said present intrastate long-distance charges yield the company excessive profits and are discriminatory.

The decision of the 3-man commission was unanimous. Commissioners John C. Hammer and Samuel S. Pharr signed along with Commissioner Jourolmon.

First started in 1941, the case was still undecided in 1944, when a compromise was reached which reduced the company's intrastate toll revenues an estimated $180,000 a year. Earlier this year a new show-cause order was issued and the first test came May 1st after Commissioner Pharr had succeeded Porter Dunlap on the commission. At that time the commission rejected a dismissal motion filed by the company.

During the three years prior to the compromise Mr. Dunlap and Mr. Hammer were reported to have blocked most efforts by Mr. Jourolmon for the reduction.

* * * *

THE Federal Communications Commission on July 10th ordered that the investigation into the rates and charges of Press Wireless, Inc., proceed immediately. The company was called

upon to show cause why the commission should not find the existing rates and charges of Press Wireless for and in connection with communication services are, or will be, unjust and unreasonable, and why an immediate interim reduction in such rates and charges should not be ordered to be made pending conclusion of the proceeding of investigation.

Press Wireless was ordered to file its answer to the show-cause provision of the order on or before August 1st.

* * * *

POSTWAR entry into the home appliance field is planned by the International Telephone & Telegraph system, it was reported recently. This new undertaking would be carried out by the system's Federal Telephone & Radio Corporation when its war production, now running at a rate of $100,000,000 annually, tapers off. IT&T has greatly improved its financial position in the past few years and it was said to be considering a refinancing operation involving one of its most important telephone operating subsidiaries, the United River Plate Telephone Company of Argentina.

This refinancing, the nature of which had not been definitely determined, would result in an improvement in respect to outstanding indebtedness. It was said on the highest authority that IT&T had no plans for disposing of present common stock holdings in the Argentine property.

* * * *

THE Minnesota Railroad and Warehouse Commission recently approved rate increases of four state telephone companies over the protests of the Office of Price Administration. The OPA objected on grounds that such action would increase the cost of living, the first time the Federal agency has issued such a protest despite 25 other previous rate boosts by the commission.

The four firms to get higher rates okayed were: Farmers Telephone Company, Emmons and Conger; Kasson & Mantorville Telephone Company; United Telephone Company, West Concord; and Washington County Rural Telephone Company, Cottage Grove.

Herbert Wolner, St. Paul, district OPA price attorney, said that rate increases can be authorized if the applicants meet certain requirements, but added that the proposed raises "will adversely affect the emergency policy of economic stabilization." Wolner did not believe that higher rates were warranted.

* * * *

AN official of the Rural Electrification Administration has indicated some interest in rural telephones. After more than a year of carefully avoiding notice of any agitation to promote Federal financing of rural telephone service, Deputy REA Administrator Neal, in a recent interview with an independent telephone manufacturing publication, admitted that REA was the logical repository for such Federal authority. Neal's reported statement doubtless had reference to the pending Hill Bill (S 1115) to amend the REA Act so as to authorize REA loans for rural telephone service.

Neal is said to have pointed out that such problems as inductive interference, duplication of construction, and other parallel problems of electrification and rural telephone service made it desirable that any Federal aid program for rural telephone service should be united with the REA program, rather than placed under another agency, which might result in wasteful duplication of effort and expense. Incidentally, Neal is reported to be assured of continuing his job under the new REA Chief Claude R. Wickard, and is already working smoothly under the new administration.

* * * *

COMPLETION of a coaxial telephone cable route between the Twin Cities and Chicago, part of which went into service four years ago, has been authorized by the Federal Communications Commission, it was disclosed last month.

Companies affected are American Telephone and Telegraph, Wisconsin Telephone, and Illinois Bell Telephone. Cost of increasing the cable facilities was estimated at $1,193,000.

Financial News and Comment

By OWEN ELY

The "Scandal" over Public Power Revenue Bonds— Representative Boren's Charges

Representative Boren, Democrat of Oklahoma, recently charged that "Wall Street bankers would convert the $18,000,000,000 private utility industry to a form of tax-free but fake public ownership by the formation of 'non-profit' corporations. [See, also, page 179.] These corporations then issue bonds against the revenue of the property. But the bankers, in estimating annual revenue to determine the amount of bonds that can be issued, include as revenue the amount of money formerly collected from customers and paid to the Federal government. The former tax revenue would not be passed down to the public in reduced electric rates, but diverted to their own pockets in the form of interest on these revenue bonds."

Mr. Boren pulls some startling statistics out of his congressional hat. He sees a deep-laid plot by the bankers and the holding companies to sell the entire electric utility industry, which he states is worth "on the market" some $18,000,000,000, for about double that amount — $33-$41,000,000,000, out of which the bankers themselves would "reap many billions." He arrives at these figures by capitalizing annual Federal tax payments of $468,000,000 at 2-3 per cent and adding the amounts to the present value of the assets.

It is difficult to take Mr. Boren's charges seriously when his statistics are so badly muddled. Thus far Federal donations (WPA, PWA, REA, TVA, and many special appropriations for public works) have played a far greater rôle in the building of public power projects and the acquisition of privately owned distributing systems than issues of revenue bonds. Complete figures for the cost of public power projects are difficult to compile, but the amount would probably be several billions of dollars. (Municipal electric utilities and governmental power districts in 1944 owned about 18 per cent of total generating capacity.) On the other hand, a rough estimate indicates that the amount of revenue bonds sold by public power districts and municipalities would probably not aggregate over half a billion dollars. (The more important projects of $2,500,000 or over aggregate less than $300,000,000, including principally Los Angeles, Nebraska, Chattanooga, San Antonio, Seattle, Tacoma, and the Lower Colorado River Authority.)

There can be little doubt that the U. S. Treasury has been by far the biggest contributor of cash for public acquisition of power plants. This has obviously been a New Deal program, since generating capacity of government power districts prior to 1932 was only 7 per cent of the present amount, and Boulder dam (the largest pre-New Deal project) was financed on a conservative basis. Mr. Boren concedes this by inference: "This wholly unforeseen development has resulted in miscegenation of the worst elements of the Marxian and the capitalistic thinking . . . the one seeks public ownership at any price—and, high though it may be, this is one way to get it. The other seeks to make money without regard to the source."

John B. Dawson, a former associate of Guy C. Myers (public ownership promoter), and now representing the Omaha Electric Committee, testified before the Boren committee that Mr. Myers had been recommended by J. D. Ross, former SEC chairman and "a close adviser of the late President Roosevelt."

While holding companies cannot sell their properties to public power districts without the consent of the SEC, it is true, as Boren asserts, that the SEC does not have power to scrutinize the sale of revenue bonds, which are exempt from competitive bidding requirements (though most business of this kind is on a highly competitive basis and is usually handled on a relatively narrow margin of profit). This situation may suggest giving the SEC greater powers.

Improved Markets Permit Better Integration Technique in Columbia Gas and Niagara Hudson Plans

THE substantial advance in the market prices of utility equities during the past year may simplify the procedure in recapitalizing and integrating borderline holding companies, such as Columbia Gas and Niagara Hudson, where there is no heavy accumulation of preferred arrears and the capital structure is not too inflated.

Two of the major problems in holding company recapitalization are (1) the valuation to be placed on the assets and (2) the formula for assigning new common stock to the old securities. As discussed in the previous issue of this department, integration plans may proceed so slowly through the SEC and the courts that changing market conditions make them obsolete. This is in effect the charge made by the group of common stockholders of Commonwealth & Southern who recently appealed to the SEC for a rehearing. Hence, it would greatly simplify matters if the SEC returned to its earlier idea of liquidating holding company assets in sufficient amount to retire senior securities. Of course, this is impracticable in all cases—perhaps in the Commonwealth Case—but it is a cleaner-cut method and disposes of questions and quibbles by old security holders over the theoretical value of assets and the theoretical basis of distribution. Value received in actual sale cannot be questioned, and senior security holders are certainly not entitled to more than redemption price plus arrears. Neither group of stockholders can quarrel with the results, although they may question the timing. (But the present time is far more favorable for liquidation than 1941-42, when the "death sentences" were issued.)

Moreover, the new idea of giving common stockholders of the holding company rights to buy the subsidiary stocks (prior to a public offering to underwriters) is a marked improvement in integration technique—it is similar to the old-style rail reorganization plans which "assessed" security holders who wanted to retain their full interest. While these "rights" may not prove very valuable, the consideration thus given to the common stockholders is important from the psychological angle.

THE new Columbia Gas plan, filed by the management, follows in general the proposals made by President Hickey of United Corporation and Alfred Berman, counsel for the protective committee recently formed. The electric properties are to be improved by capital refundings and other changes, smaller companies being merged with Dayton Power & Light and Cincinnati Gas & Electric. The Cincinnati and Dayton stocks will then be offered to Columbia's common stockholders, sale of unsubscribed stock presumably being underwritten by a banking group. These sales are apparently expected to net some $75,000,000, on the assumption that they can be made after removal of excess profits taxes by Congress—both companies are heavily in the EPT bracket.

Columbia's two issues of 5 per cent debentures would be refunded, probably

into 3s or 3¼s. (The original plan suggested 3½s, but the bond market has shown substantial improvement in the interim.) The aggregate amount may be increased from $76,835,000 to $80-$85,000,000, instead of being reduced to $60,000,000 as originally proposed. United Fuel Gas will also sell some $25,000,000 bonds, paying the proceeds to Columbia to clear up advances by the parent company.

Using some $10-$15,000,000 treasury cash, the $110,000,000 or more to be realized by the two bond sales and the estimated $75,000,000 proceeds of sales of the electric company stocks, Columbia would obtain nearly $200,000,000 cash with which it could retire at call prices the two debenture issues, the two first preferred stocks, and the preference (second preferred) stock. All the securities are currently selling above par with the exception of the preference stock, around 94.

Consummation of the plan would leave Columbia with a single issue of bonds and one class of stock. Common stockholders would have the full equity in the important natural gas system (assuming that outlying properties can be retained under SEC rulings). The new plan appears more likely to succeed than the old one since it conforms substantially to criticisms of important stockholder interests and also to SEC recap policies. There is no question of dividend arrears involved, and the only anomaly is the favorable treatment of the preference stock, which several years ago sold as low as 15¼; however, the stock is callable at 100 compared with 110 and 105 for the two first preferreds.

THE new Niagara plan is along somewhat similar lines. It will be recalled that two plans had been presented for recapitalizing the big subholding company in the Niagara system—Buffalo, Niagara & Eastern—one proposing to give Niagara Hudson only 9 per cent of the new equity stock and the other (filed by Niagara) paying 35 per cent. The new plan provides for redemption of BN&E's $1.60 second preferred stock, at call price plus arrears—a total of about $31 compared with the recent market price of 28. BN&E will be merged with its subsidiaries, becoming a new operating company known as Buffalo Niagara Electric. Niagara Hudson will retain the entire common equity.

The $57,000,000 debt of Buffalo Niagara and Niagara Lockport would be refunded together with the BN&E first preferred. Niagara Hudson would have to supply BN&E with $63,000,000 cash required to retire the $1.60 preferred. This would be obtained from cash on hand, sale of miscellaneous investment holdings in Consolidated Edison, Central Hudson Gas & Electric, and Central New York Power, and a $40,000,000 bank loan.

Niagara Hudson would, at some later date, retire its bank loan through cash income and liquidation of whatever proportion of the Buffalo Niagara Electric common stock might prove necessary. Eventually Niagara Hudson would also eliminate its own first and second preferred stocks, on which there are current arrears due to difficulties of several years' standing over plant write-off adjustments. Niagara would reduce the par value of its own stock to $1 a share to facilitate any necessary balance sheet adjustments.

It seems quite possible that similar methods might be employed for other holding companies where preferred arrears are not too large. Commonwealth & Southern preferred, for example, could be retired at about $139 (call price of $110 plus $29 arrears). The new policy of retiring senior securities, if applied wherever practicable, should bypass many troublesome problems and help expedite the holding company integration program.

Manufactured Gas Stocks

OUR table of manufactured gas stocks, which appeared last in the May 24th FORTNIGHTLY, now includes two additional issues—Savannah-St. Augustine

MANUFACTURED GAS COMPANY STOCKS

	Where Traded	Price About	Latest Earnings	Previous Earnings	Price-Earn. Ratio	Div. Rate	Yield About
Bridgeport Gas Lt.	C	27*	$1.46(a)	$1.48	18.5	$1.40	5.2%
Hartford Gas	O	41	2.10(a)	2.26	19.5	2.00	4.9
Brockton Gas Light	O	11	.73(a)	.70	15.1	.69#	6.3
Providence Gas	C	9	.47(a)	.53	19.2	.50	5.6
Haverhill Gas Light	O	24	1.78(c)	1.50	13.5	1.40	5.8
Springfield Gas Light	O	28	1.84(a)	1.42	15.2	1.60	5.7
Fall River Gas	O	32	2.21(c)	2.08	14.5	1.80	5.6
Brooklyn Union Gas	S	29	2.90(b)	2.26	10.0	1.00	3.4
Birmingham Gas	O	9	1.26(b)	1.18	7.1	.60**	6.7
Savannah-St. Augustine	O	17	1.42(a)	1.45	12.0	†	..
Jacksonville Gas	O	27	2.86(a)	2.56	9.4	1.00	3.7
Averages					14.0		5.3%

S—Stock Exchange. C—Curb. O—Over counter. *Nominal (quoted 24-30). **Payments irregular (60 cents in 1943, 30 cents in 1944, and 30 cents early in 1945). #Irregular (quarterly rate increased from 15 cents to 18 cents in April). †Offered to public in February, 1945; dividend policy not indicated. (a) Twelve months ended December 31, 1944. (b) Twelve months ended March 31, 1945. (c) Twelve months ended May 31, 1945.

Gas and Jacksonville Gas. The former was offered at $15 a share in February by a syndicate headed by C. A. Evans & Co. of Atlanta, and is now selling about two points higher. The company was incorporated last October, taking over the two companies formerly controlled by American Gas & Power Company, a holding company in process of liquidation. The new company also issued $1,300,000 first 3¼s/1965 (sold privately) and 6,250 shares of 5 per cent preferred stock (publicly offered at 96). The Jacksonville Gas stock was issued in 1943 in exchange to holders of income debenture 6s of the predecessor company.

The list falls naturally into three groups: The first seven are old-line New England companies with fairly high price-earnings ratios, but rather high dividend yields due to generous payments. Brooklyn Union Gas is in a class by itself—a market laggard in previous years, it has suddenly made a sharp come back. A second refunding operation may permit a more generous dividend rate. (At present the bonds issued early this year carry heavy sinking funds.) The last three issues are southern company stocks, somewhat unseasoned and selling at relatively low price-earnings ratios.

Due to nominal markets on some of the closely held New England issues, it is a little difficult to appraise the price trend of the manufactured gas stocks accurately, but this has been generally upward as with other utility groups. Brooklyn Union Gas is down three points in the quarter, but this stock had a very sharp advance previously. Fall River is up two points and Haverhill and Hartford about a point each, while other issues remain steady.

American Gas Association charts show the trend of manufactured and mixed gas sales to ultimate consumers up to May 31, 1945, as compared with 1944. While there has been some irregularity, with April running substantially behind last year, May sales in therms gained 5.54 per cent over last year, and in terms of MCF the gain was 4.88 per cent.

In the five months' period therm sales were 4.20 per cent over last year. Fluctuations reflect differing weather conditions to some extent. There is a lag in the reported figures of nearly a month. (A large proportion of May sales represented April business.)

The Refunding Program Gets Under Way Again

As indicated in the accompanying chart on utility financing the war bond drive in June gave the investment banking market a well-deserved "rest" so far as corporate financing was concerned. The only utility flotation during the month was the private placement of $30,000,000 Cities Service Gas Company 2¾ per cent of 1965.

In July utility issues had to compete with increased railroad and industrial financing, and in the first half of the month only three important issues were offered—$24,000,000 Portland General Electric 3⅛s, due 1975, 140,000 shares of Panhandle Eastern Pipe Line 4 per cent preferred, and $7,500,000 Mountain States Power first 3s due 1975. Other utility companies which are expected to finance at a relatively early date are American Telephone and Telegraph ($175,000,000 2¾s), Kings County Lighting, Arkansas-Missouri Power, New York State Electric & Gas, Southern Bell Telephone, and Bellows Falls Hydro-Electric. Many other issues are tentatively scheduled for late summer or autumn.

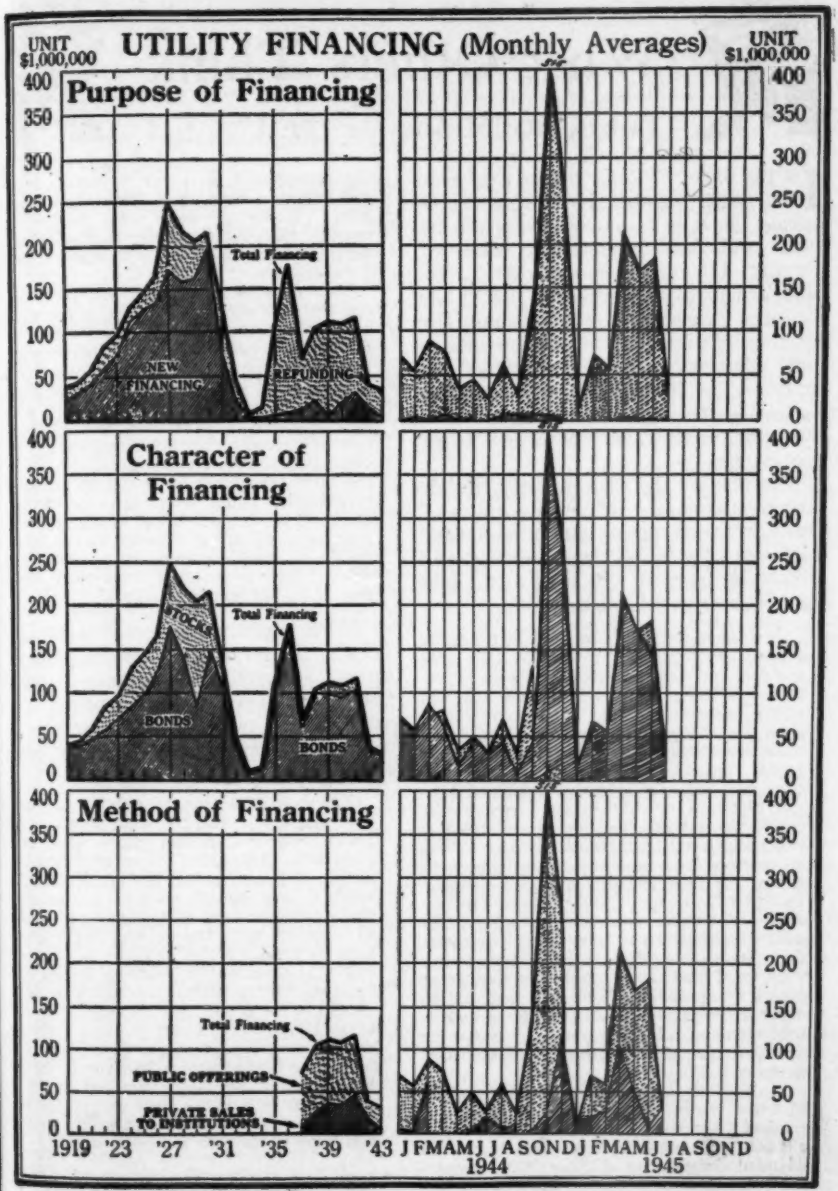
Importance of Preferred Stock Refundings to Common Stockholders

WHILE the utility bond-refunding program during the past decade has been an important factor in maintaining earning power during a difficult period, the fact is sometimes overlooked that from 40 to 85 per cent of the savings in fixed charges are lost due to increases in Federal taxes. Of course there may be very substantial nonrecurring tax savings, due to the charge-off of called bond premiums against current income as reported to the Treasury Department. But these special savings, while they are an important factor in the financial picture as a whole, are usually disregarded in the reports to stockholders—being offset by a "charge in lieu of tax savings," so that stockholders and regulatory commissions will not assume that the company has enjoyed a sudden jump in earning power.

But the case is entirely different with preferred stock-refunding operations. While the volume of such refundings is smaller, the savings are more important from an earnings standpoint. The reduction in dividend rates is usually more substantial than the cut in coupon rates —in many cases as much as 2 per cent or more; also, the whole saving is tax free.

Thus the earnings for the common stock may be substantially increased. In a large holding company system the refunding of a number of subsidiary preferred stocks may thus result in substantial leverage gains for the holding company common stock. This factor helps to account for some of the remarkable gains in low-priced holding company equities during 1945. However, due to the long delays before actual or potential savings appear in the published earnings statements on a full annual basis, the amount of the gain can only be appreciated by those who make a careful study of *pro forma* or projected figures.

Unfortunately the amount of preferred stock outstanding for all electric utility companies is not compiled. However, we do know that in 1944 dividend payments on preferred stocks of all class A and B electric utilities amounted to $117,168,000 (a decrease of about $7,000,000 from the previous year). The preferred stock-refunding program only got under way on an important scale last year (particularly for holding company subsidiaries) and it seems probable that potential savings in remaining refundings might approximate some 20-25 per cent of present dividend requirements, or approximately $23-$29,000,000. This would permit (assuming it were all paid out to common stockholders) an increase in common disbursements of some 8-11 per cent, and of course higher percentages for the holding companies.


UTILITY FINANCING (Monthly Averages)
UNIT $1,000,000
Purpose of Financing
Total Financing
NEW FINANCING
REFUNDING
Character of Financing
STOCKS
BONDS
Method of Financing
PUBLIC OFFERINGS
PRIVATE SALES TO INSTITUTIONS
1919 '23 '27 '31 '35 '39 '43
J F M A M J J A S O N D J F M A M J J A S O N D
1944
1945

What Others Think

Public Relations for the Utilities

IN the June 9th issue of the magazine *Telephony*, published in Chicago, is reported the text of an address given by Francis X. Welch, managing editor of PUBLIC UTILITIES FORTNIGHTLY, on June 5th in that city, before the Public Utilities Advertising Association. The meeting was attended by public relations and advertising executives from all branches of business-managed utility service—telephone, electric, gas, transportation, and water companies being represented.

The title of the address was "Public Relations and the Chief Executives." Portions which suggest rather an unusual approach to this important subject, and which also open up new lines of thought upon it, are quoted below:

> As I see it, the future security of the entire utility industry is going to depend in large measure on the effectiveness of its public relations officers. It is well known that the utility business, like any other major business, goes through cycles or periodical stages of development which place emphasis on different aspects of operation. In the very beginning it took the inventive genius of Edison, Murdock, and Bell to get the enterprise out of the test tube and into actual physical existence. After that, it took the men skilled in business promotion and money raising to assure the new industry a sound financial foothold. Then came the usual period of litigation of patents and other growing pains which required great legal talent to protect the young industry's existence. Next, in this country at least, we entered upon that great period of expansion which has produced so many fine engineers and geniuses of industrial planning. The depression placed more emphasis on everyday shrewd business management.
>
> Today, however, we are on the threshold of a new era in the field of public utility operation. (And I refer now to all utilities: gas, electric, and telephone.) We are in an era of misunderstanding. Utilities have powerful and articulate critics, in and out of government. Many people are thinking and saying unkind and, in many instances, unfair and untrue things about the utility industries. There are those who, for various reasons, labor night and day to discredit and destroy public confidence in their public service companies.
>
> This situation, gentlemen, can mean only one thing. It means we are in an era which calls for the best public relations effort that the industry can possibly develop. In short, the industry must accentuate public relations today, just as it accentuated inventive, financial, legal, engineering, and economical managerial leadership in former years. It means, not only accentuating public relations in the office of the public relations official having special responsibility for that work; it means accentuating public relations in the business office, in the branch office, in the construction, installation, maintenance, and repair offices, and, most important of all, *in the front office*. I refer to the office of the chief executive of the utility company. . . .

"What is public relations?" asked Mr. Welch. "I have asked a good many men actively engaged in public relations work and I have never gotten precisely the same answer twice. The importance of mere definition, of course, can be overemphasized." He continued:

> The best definition of public relations I ever heard was also the most simple. Good public relations merely means good relations with the public. Now that is not as simple as it may sound at first. If we think about it long enough we have got to admit that no company can escape having *some* kind of relations with the public. The relations may be good, or they may be bad — very bad. . . . good public relations should lead company policy instead of following it. It should be the good guardian angel instead of being blindly subordinate to chief executive management which might conceivably fall under the influence of a bad angel. Viewed in this light, good public relations should be a guide as well as the most valuable instrument the chief executive of a utility concern can hope to have in the years ahead.

"OBVIOUSLY," Mr. Welch said, "the utility company cannot *fight*

with its government. Fighting isn't necessary. The reason for any friction at all is to be found in misunderstanding. The goal, therefore, as I see it, of utility public relations along this line is to remove the basis for misunderstandings by informing the public and — yes — by informing the government, through the public, just what the true situation is."

The speaker continued:

> . . . It isn't an easy public relations job, I know. It would be presumptuous for me to attempt to tell you how it can be done. But I do know that the American people have a sense of justice—a sense of sportsmanship—which, appealed to in the right way, will neutralize the effect of any unfair attack on any institution—public utilities or otherwise.
>
> When I say "appealed to in the right way," I know I have touched the crux of the entire public relations problem. Appealing to the public sense of justice and equity is not as simple as trying a case forthrightly in a courtroom, as a lawyer would try it, where the judge is paid to listen and can't get out of it. I believe one of the truisms of your publicity business is that the public generally does not want to listen to other people's troubles if they are served up just that way—as troubles. The average man has troubles enough of his own. But if an appeal is made to his own selfish instinct—and I use the word selfish in its better sense—if it can be shown that he stands to save money or get better service or otherwise obtain a more comfortable and secure future for himself and his family, he will naturally listen. It is money in his pocket to listen.

"Coming now to our next problem of coping with direct government competition or public ownership activities," said Mr. Welch, "it is apparent that those in charge of utility public relations are going to have, in the years ahead, their most difficult assignment." He added:

> I say this in view of the vast amount of propaganda which is already tumbling forth from the presses and public speakers' platforms in favor of direct public spending for public works. Here again the objective must be to avoid even the appearance of direct conflict with the government, not only because that is futile, but because it puts the industry in a false position. Instead, the emphasis must be upon better public understanding of what is fair, what is necessary, and what is economic. . . .
>
> One challenge which utility public relations faces in getting better public understanding of the factors involved in this type of government activity is the fact that it is laboring under a 10-to-1 handicap and that ratio is only a rough guess. The reason is obvious enough. Public ownership in this country, traditionally devoted to private enterprise, is still a novel experiment. Because it is novel and because it is an experiment, conducted with funds in which we all have a stake through our tax payments, it is only natural that a large number of people are interested in it.
>
> That is why Chairman Lilienthal of the TVA and some professional writers are able to write and have published as straight educational and entertainment material very valuable and very favorable propaganda in favor of these undertakings. This is a natural advantage which these people would be foolish not to use. . . .
>
> This handicap is a fact. Because one man's propaganda is another man's best seller, Mr. Lilienthal and others are thus able to write and get paid for favorable publicity which privately owned and operated enterprise could not obtain without laying out thousands and thousands of dollars, engaging the very best literary talent. Even then it is doubtful whether the reader attention would be comparable.
>
> But the novelty of TVA and other similar enterprises will wear off. Sooner or later there is going to be a more circumspect attitude by the public with respect to Federal spending in the light of the heavy tax burden. When that time comes, some of these public ventures will have to go on the defensive and justify themselves. By that time, it may be private industry's turn to take a few publicity tricks. Right now, we might as well admit that the publicity advantage runs overwhelmingly in favor of public ownership.

"FINALLY," the speaker declared, "I come to the task of public relations with respect to government tax policies. I single out tax policies, first because taxes loom so large in the public utility picture and will continue to do so. But there is another public relations job to be done in the correct handling of publicity regarding taxes which public utilities pay and which politically managed utilities do not pay." He continued:

> In the future . . . the public utility industries owe it to their customers to look into the present trend of government tax policy which seems to pile more and more taxes on utilities simply because they are an excellent collection medium.
>
> There is a smart public relations angle here which will appeal to the utility customer. These taxes, as we know, are in large part passed along to the consumer. Relief

from these taxes will mean relief for the utility consumer through his rates.

And while we are about it, I think the time will shortly come when we must make an issue of the unfair and unwarranted discrimination whereby municipal plants, coöperatives, and other types of politically managed utilities escape their fair share of the tax burden through statutory exemptions. There is a public relations angle here too. What would the citizens of Chicago say, for example, if they were suddenly told that they must go on paying 6 cents Federal tax on each package of cigarettes they buy, while cigarette smokers who live in Cleveland, Los Angeles, Seattle, and elsewhere will be exempt? We know what they would say, all right. They would burn right up and demand to know what in tarnation was going on in Washington. Obviously, we have a similar situation in our Federal tax policies with respect to exemption of politically managed public service agencies.

"Summing up," the speaker concluded, "I think it is fair to say that never in the history of public utility industry have public relations been so important," adding the following:

> Indeed, as one utility chief executive recently put it: "For the next year it looks as if public relations will be about the only new thing we will have to sell." If I could presume a word of advice to all company executives, I would say go ahead and sell it. Good public relations is not rationed; it needs no red points or blue points. And the right effort gets plenty of results too. All of you have heard about Samson in the Bible. He only took two columns, but he brought down the house.

HERE at the nation's capital, with its numerous bureaus and commissions having intimately to do with utility affairs, and, too, with the not infrequent debates in the halls of Congress upon bills, the passage of which may very definitely affect utilities either for better or worse, one is constantly reminded of the importance of better understanding of certain basic facts with respect to the large question of governmental competitive activities, and their reflection upon the long-established business-managed electric utilities.

It was sound counsel the speaker gave in urging that the goal of utility public relations is to inform the public and—more than that—through the public, to inform the government of the true, basic facts in this situation. A public which knows the truths of these matters can be a wonderful force in removing the misunderstandings which have arisen. In intelligent educational work to that end lies a very real opportunity for those having to do with the public relations of business-managed utilities.

—RALPH S. CHILD

Investor Interest in Annual Reports

IN the May 10th issue of PUBLIC UTILITIES FORTNIGHTLY, page 635, in an article, "Annual Reports Make Instructive Reading," extracts were given from the reports of several business-managed utility companies, and the comment was made that "many companies are presenting a variety of informative facts relating to their affairs in a most readable and instructive manner . . . so as to better enlighten the general reader." Also that "the recital in an annual report of a variety of matters which have a direct bearing upon the fundamentals in the utility industry under business management is one means, and an excellent one, of educating people upon certain phases of this business regarding which many have been too little informed."

CONFIRMATION of the value of annual reports of this type, and of the interest of investors in the information contained in them, is revealed in an article, "Investor Interest in Reports Tested," by Warren R. Williams, in *The New York Times* of June 3rd. This article refers especially to a recent poll of typical investors on a nation-wide basis, conducted by The Herald Square Press, to determine reader interest and tastes in annual reports.

Mr. Williams states that "the response was substantially above the average for

"LADIES AND GENTLEMEN, THE GREAT LIGHTS HAVE JUST GONE ON AND MR. STINKY SWEENEY, WHO WILL BE OUR GUEST CONDUCTOR THIS EVENING, IS APPROACHING THE PLATFORM"

sample surveys and showed that stockholders are interested deeply in the facts related to corporate activities."

Questions ranged the gamut, from sizes of cover and styles of type to the kind of information desired and methods of presenting it. Answers showed that while profits and losses are of paramount concern, investors want to know about a company's products, its markets, and a host of other operational problems.

The majority, according to Mr. Williams, likes the medium cover size adopted by most companies with the story told in fewer than twelve and not more than twenty-four pages. A plain cover is favored, but a liberal use of photographs and pictorial graphs to relieve and clarify the copy inside is preferred. Tastes in color are conservative, with the majority satisfied with black, and the range limited, for the most part, to black and two colors.

Nontechnical prose is preferred by 79 per cent of those questioned, while only 6 per cent underscored the "news flash style." A large percentage said that if the report were attractive and readable, they would show it to their families as well as their business associates.

A summary page of statistics of the year compared with previous years was put down as a "must," together with a comparative balance sheet. The comparisons should, in some cases, go back as far as ten years.

A statement of dividend policy was voted as an essential item of the annual report. Tax information was desired, with emphasis on the ratio of taxes paid to net profits before taxes and the ratio of taxes paid to dividends paid. A gross sales breakdown was not insisted upon.

The majority wanted a statistical analysis of employee relations, including the number of employees, salaries, wages, and hours, and a comparison with industry averages and all-industry averages.

STOCKHOLDERS are interested in other stockholders, the survey showed. They want to know about yearly trends in the number of stockholders, average holdings per stockholder, and geographical percentage distribution of stockholders.

Between 80 and 95 per cent of those questioned evinced a desire to know the postwar plans of their corporations, the background and affiliations of officers and directors, the nature of products and services, advertising, and research programs.

The largest preference in graphs was for those showing trends of earnings and dividends, gross and net incomes, sales trends and taxes, and a map showing location of the company, its plants, sales agencies, subsidiaries, and sphere of influence.

Photographs of products were favored by most of those polled. Photographs of buildings and plant facilities, processes of manufacturing products, and their use also found favor.

"What about a Missouri Valley Authority?"

UNDER the above title, the *Cleveland Plain Dealer* published in its issues of May 22nd and 23rd an article by Arthur E. Morgan, former president of Antioch College, superintending engineer of the United States Drainage Investigation, and from 1933 to 1938 chairman of Tennessee Valley Authority.

Dr. Morgan's experience in river basin problems has been extensive. Under his direction the successful Miami conservancy project was carried out, following the disastrous floods in that river valley at Dayton, Ohio, some years ago.

The *Plain Dealer* prefaces the article with the comment that it is presented as a contribution to an understanding of the question, "whether this nation should embark upon a duplication of the TVA experiment in the Missouri valley and elsewhere," which it considers tremendously important.

Dr. Morgan begins his article by saying:

> Current proposals for a Missouri Valley Authority after the type of the Tennessee Valley Authority disclose lack of maturity in our thinking on the subject of regionalism and decentralization of government. We are still operating by the process of competing political pressure groups, where we very much need the help of competent social engineering.
>
> No two great dams are alike. . . . To try to build identical structures under very different conditions would be thoroughly bad engineering.
>
> In the field of civil engineering we can see clearly enough the need for making plans which will fit the case. In government, on the contrary, we commonly fail to see the point, and often try to duplicate plans under very dissimilar conditions. This has been the case with much of the discussion of the proposed Missouri Valley Authority. Both those who support and those who oppose the idea are inclined to assume that such an undertaking would substantially duplicate the TVA, and they support or condemn the idea on that basis.

THEN in citing the difference between the Tennessee and the Missouri river drainage areas, Dr. Morgan states that the Tennessee drains about 40,000 square miles, while the Missouri drains an area nearly fifteen times as great. The Tennessee is the same kind of river with the same kind of interests along its entire course. The chief issues in its control are navigation, flood control, and power.

The Missouri river drainage area, he points out, presents a very different con-

dition. As compared with the Tennessee, its power possibilities are relatively unimportant. He said:

> . . . For the upper 2,000 miles problems of flood control are minor and navigation interests are almost nonexistent. The chief use for the water is for irrigation, and secondarily for power. For the lower several hundred miles of its course the interest of irrigation disappears and power development is probably not economical, while navigation and flood control are the controlling issues.
>
> In the upper reaches of the Missouri the irrigation interests are administered chiefly by the Reclamation Service, largely under state codes. This administration has won the respect and confidence of the nation. Along the lower Missouri, flood control and navigation have long been administered by the United States Army, and that control is closely associated with similar control on the lower Mississippi. The upper and lower Missouri rivers thus have strikingly different interests and are in effect separate regions.

After pointing out these markedly different controlling factors pertaining to the upper and lower reaches of the Missouri river, Dr. Morgan concludes that, despite certain limited interests they may have in common, "to put the administration of these two widely different regions under one board would greatly strain any reasonable concept of regionalism." He continued:

> The project for an MVA has formidable hurdles in its course. On the other hand, the prospect for expenditure of many hundreds of millions of government money, after the manner of TVA, is a very strong incentive, and the forces of over-all government planning have much influence. Such an organization as an MVA would be a powerful instrument for bringing in a new social order. Also, many people are romantic, and there is romance in far-flung public works.
>
> At present these various interests are supporting campaigns of competitive propaganda, the planners seeking an all-powerful MVA, while the various regions are seeing their immediate interests more clearly, perhaps, than they see the over-all picture. Here is where the methods of pressure groups should be displaced by the process of social engineering. If social engineering is applied to the Missouri river, the resulting design will be very different from a duplication of the TVA.

Two suggestions are made by Dr. Morgan for meeting the Missouri river situation. An "over-all referee board" might be established to intervene and decide in cases of conflict of interest between the upper and lower river, or where there should be a sharing of burdens. Or, he stated, "It might be far more feasible to have two Missouri Valley authorities—one for the upper river, where irrigation interests dominate, and another for the lower river, where navigation and flood control are the chief interests. Probably the Reclamation Service should continue its irrigation interests and the Army should limit its concern to the lower river."

OBSERVING that a current delusion in the American mind is the idea that the drainage areas of rivers necessarily constitute natural regions which may be administered as units for many purposes, Dr. Morgan states that "an understanding of functional regionalism and of administrative regionalism would go far to clear the air." He added:

> . . . Examples of functional regions are the Tennessee river drainage area for river control, the citrus-growing regions—one in California, Arizona, and New Mexico, one in Florida, and one in Texas—for control of citrus tree diseases . . . Administrative regions are those set up for administering the functions of government which do not vary greatly with locality, such as post office service, justice, and tax collection. There is at present much confusion in the minds of those promoting new "authorities" as to the nature of regional government. There is no reason why soil conservation, or dividing land into 160-acre farms and financing the building of farm buildings, should be administered by the same regional organization as flood control or navigation on a river.

In closing, Dr. Morgan makes this thoughtful and considered comment:

> Unless we straighten out our thinking in the matter of "authorities" and decentralization and regionalism we shall drift into a state of confusion in national administration which will make our government good hunting ground for bureaucracy far removed from direct democratic control.

This need of "straightening out our thinking in the matter of 'authorities,' decentralization, and regionalism" was strikingly illustrated in the testimony of

numerous witnesses at the Senate Commerce subcommittee hearings on MVA in May. Most of the proponents of an MVA, for example, used TVA as a model and wanted to apply it to the Missouri river, despite the marked differences in the two river basins.

Dr. Morgan's article defines those differences, and indicates the need of better understanding by the tax-paying citizens of this country of the fundamental factors which cannot be ignored in any discussion about river basin developments.

—R. S. C.

Power Plays Its Part in Wartime Technological Developments

A REPORT on "Wartime Technological Developments" was issued in May by the subcommittee on war mobilization of the Senate Committee on Military Affairs. The report was prepared by the productivity and technological development division of the Bureau of Labor Statistics. The preface, signed by Senator Harley M. Kilgore (Democrat, West Virginia), chairman of the subcommittee, states: "This report is a valuable aid to understanding America's postwar economic opportunities. . . . The higher standard of living we must attain after the war depends in large part upon the widespread adoption of new techniques and inventions as they are developed."

The list of contents of this 400-page report covers a wide range of products of industry and wartime technological developments. This is a book which provides a concise record of the far-reaching progress in the improvement and adaptation of many technical products and processes. It should be a useful survey for those interested in formulating postwar programs.

In glancing through its pages, the thought occurs that the motivating force making possible most of these revolutionary technological developments was electricity, and that the great bulk of the electric power supply was furnished by business-managed utilities. The electric energy, generated in the great plants of these utilities, flowed over extensive interconnected transmission lines, to drive the machines producing the implements of war in most of the country's vast manufacturing industries. This ample and assured supply of electric power played its part in the making of many of the products told about in this report.

—R. S. C.

Business Firms Benefit by Utility's Market Survey

DURING the latter part of June, Consolidated Edison Company of New York, Inc., issued an extensive study of the economic life and the living and buying habits of New Yorkers. Entitled "Survey of the New York City Market," this large book (12 by 18 inches in size) contains 124 pages and has 63 charts, 83 tables, and 87 maps.

The company states that this market survey has been prepared "to help every business with a product to sell or a service to render in New York city." Much of the information, it is explained, was compiled in connection with the company's studies of the make-up and development of the city for use in planning future requirements of electricity, gas, and steam. The data, presented in graphic form, were obtained from various sources including the U. S. Census of 1940 and local agencies.

A foreword, by R. H. Tapscott, president, comments that "New York city holds many first places among the nation's cities. It has the greatest popula-

tion, the largest port; it is the leading city in value of manufactures, the world's center of finance, the greatest retail market." But, it is pointed out, "along with these firsts go complexities found nowhere else . . . people from every state in the Union and from every nation on earth. Their habits, desires, and preferences are inconceivably varied."

As a consequence, observed Mr. Tapscott, "a unique marketing problem confronts the man who wants to do business here. If he wants best results, a detailed study is imperative. . . . As a contribution to your postwar planning, Consolidated Edison has compiled this survey of the New York city market."

A glance through the pages of this book reveals exhaustive and detailed data upon such subjects as population, housing characteristics, rent an income indicator, number of 1- and 2-family structures, their age and state of repair, and their plumbing equipment. Included also is general information regarding manufacturing, retail and wholesale trade, service industries, structures and equipment, and transportation facilities.

THE comprehensive nature of the factual information presented, the authoritative sources from which it was compiled, and the infinite detail disclosed in the many tables, charts, and colored maps leave the impression that this survey should be a practical and very helpful source-book for anyone interested in the postwar New York city market.

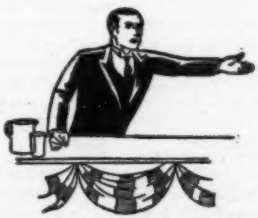
Upon announcing its publication, Clarence L. Law, vice president, frankly stated: "We have prepared this market survey in an effort to promote our business by helping our customers to promote their business. The more business our customers do, the more business we do."

In thus making this survey available, Consolidated Edison recognizes the mutuality of interests which actually exists between a utility serving a community and the other business concerns in that community.

And, in so doing, the company has contributed an outstanding public service, the beneficial results of which may well be far-reaching.

It should be noted, too, that such policies, adopted to advance a utility's own business by promoting also the business of its customers—so carried out as to benefit the public served—can be helpful in building public relations, a factor of prime importance to all utilities.

—R. S. C.



"THE power of the written word lies in shaping the mind and spirit of man toward high achievement. There is, of course, a wide gulf between a statement of fact or of principles, on the one hand, and epithets or empty promises on the other. In recent years we have had good reason to learn that difference in our domestic affairs. It is not enough to talk about a more abundant life if the actions that follow the words leave millions unemployed and dependent upon government for a bare existence. It is not enough to talk about economic security and then pursue policies which promote insecurity. It is not enough to talk about the enterprise system and then pursue a course of action that stifles enterprise."

—THOMAS E. DEWEY,
Governor of New York.

The March of Events

Companies Form Association

A NATIONAL association of electric light and power companies was scheduled to be established about August 1st with headquarters in Washington, D. C., it was announced last month.

Its purpose will be to further the interests of customers, employees, and investors of member companies, to coördinate regional activities, and to strengthen government-industry relations, the announcement said.

Its president will be Purcell L. Smith, of Chicago, who is president of the Middle West Corporation.

The organizing committee consists of A. C. Spurr, Fairmont, West Virginia; James M. Barry, Birmingham, Alabama; and K. M. Robinson, Spokane, Washington, all operating electric company officials.

Natural Gas Testimony Mapped

PLANS for organizing the presentation of the natural gas industry's testimony at the investigation hearings before the Federal Power Commission, scheduled to start in Kansas City on September 18th, are being mapped by the industry, it was announced by the Independent Natural Gas Association of America on July 13th.

The executive committee of INGAA and industry representatives have decided to set up a steering committee to coördinate the testimony to be presented by the industry. Working under this steering committee will be subcommittees, each delegated to prepare the testimony to be presented on a certain topic.

Collaborating with the steering committee and the various subcommittees will be E. Holley Poe and Associates, nationally known natural gas engineers, employed consultants, and personnel borrowed from the industry.

The personnel of the steering committee and of the various subcommittees and the topic assigned to each subcommittee was to be announced following a meeting scheduled for July 19th.

FPC Grants Rehearing

THE Federal Power Commission last month announced that it had (1) granted the Reynosa Pipe Line Company of Corpus Christi, Texas, a rehearing on its application in Docket No. G-595 to export up to 60,000,000 cubic feet of natural gas a day from Texas to Mexico; (2) consolidated Docket No. G-595 with Docket No. G-594, the company's application for a certificate of public convenience and necessity to construct and operate facilities to be used for exporting the gas; and (3) ordered the consolidated hearing for October 3rd at Washington, D. C.

The company's application in G-595 to export gas to Mexico, principally for use by industries in and around Monterrey, was dismissed without prejudice by the commission's order and opinion of May 8, 1945, on the ground that such exportation would not be consistent with the public interest. In its opinion, the commission also pointed out that an adequate showing was not made as to the possibility of obtaining supplies of natural gas within Mexico.

Vice Chairman Leland Olds and Commissioner Claude L. Draper dissented from the May 8th order.

Introduces Amendment to FPC Act

REPRESENTATIVE Harris of Arkansas last month introduced in the House a bill (HR 3704) to amend § 1 of the Federal Power Act, with respect to the terms of office of members of the Federal Power Commission.

The second paragraph of the section would be amended by inserting immediately after the second sentence thereof a new sentence as follows: "Upon the expiration of his term of office a commissioner shall continue to serve until his successor is appointed and shall have qualified."

The hold-over provision, which is already contained in the Interstate Commerce Act, was not expected to encounter opposition.

EHFA Liquidation Completed

JOHN W. SNYDER, Federal Loan Administrator, announced last month that the Reconstruction Finance Corporation had paid the United States Treasury $1,450,000 in the final liquidation of the Electric Home and Farm Authority.

EHFA was incorporated under the laws of the District of Columbia August 1, 1935, with a capital of $850,000 to succeed Electric Home and Farm Authority, Inc.

From the beginning the authority has assisted 7,100 small contractors and business con-

cerns in 37 states by purchasing instalment contracts covering the sale of refrigerators, ranges, water heaters, washing machines, cream separators, etc., to more than 383,000 householders who could not buy for cash. The contracts so purchased aggregated approximately $53,048,000 and averaged less than $150 per contract.

The $1,560,000 paid to the Treasury was said to represent a net return to the government of $710,000 over the $850,000 capital stock of the authority.

ICC Asks Rehearing

THE Interstate Commerce Commission on July 9th asked a rehearing on a recent U. S. Supreme Court decision, which set aside an ICC order affecting railroad passenger rates in four southern states.

In a 5-to-4 decision, the court ruled on June 11th that the ICC lacked sufficient evidence to require intrastate railroad rates in Alabama, Kentucky, Tennessee, and North Carolina to be raised to the level of interstate rates.

The ICC's order issued on May 8, 1944, directed that the states' passenger coach rate of 1.65 cents per mile be raised to the interstate level of 2.2 cents per mile.

FPC Issues Certificate

THE Federal Power Commission last month issued a certificate of public convenience and necessity authorizing Northern Natural Gas Company, a Delaware corporation having its principal office in Omaha, Nebraska, to construct, at an estimated cost of $2,022,724, and to operate one additional 1,300-horsepower compressor unit at each of its Bushton and Mullinville, Kansas, compressor stations; approximately 15 miles of 24-inch loop pipe line extending northeast from a point in Ellsworth county, Kansas, to a point in Ottawa county, Kansas; and a natural gasoline recovery plant and dehydration plant at the company's Sublette compressor station in Seward county, Kansas.

Northern Natural stated that the proposed facilities would increase the delivery capacity of its system by about 8,000,000 cubic feet of natural gas a day during the 1945-46 heating season. This will enable the applicant to supply the additional demands upon its system by existing gas distributors. In turn the distributors will supply an estimated 7,000 additional domestic and commercial space-heating customers.

The state corporation commission of Kansas, intervener in the hearings on this matter, advised the FPC that it "has no special objection to the reasonable increase of facilities and reasonable increase of takes of gas from Kansas in so far as necessary to supply markets to which applicant is now obligated because of previous commitments."

Northern Natural Gas Company is engaged in the transportation of natural gas produced in the Texas Panhandle field and in the Hugoton and Otis fields in Kansas, and in the sale of natural gas for resale in Kansas, Nebraska, Iowa, Minnesota, and South Dakota.

Gas Strike "Truce"

THE compressor stations of the United Fuel Gas Company, Charleston, West Virginia, began shooting fuel in full measure to eastern war industries on July 11th with a decision of CIO Oil and Gas Workers for a "temporary" cessation of a 2-day strike.

The "temporary" phase was emphasized by union spokesmen who said the return was conditioned on "favorable action" of the War Labor Board on the oil workers' demands and a WLB promise that a hearing on the issues would start the following week.

During the 36-hour period that most of the compressor stations were shut down only domestic consumers got gas. Stand-by supplies were used by industrial consumers in West Virginia, Kentucky, Virginia, Pennsylvania, Ohio, and New York.

Before announcement of the settlement—effected after a series of meetings—agreement had been reached to turn back into the mains 100,000,000 cubic feet daily received via Tennessee Gas & Transmission lines from Texas and other southern fields. This had eased the industrial situation somewhat.

The CIO union, which took a strike vote under the Smith-Connally Act, walked out 1,000 strong on July 9th at midnight to seek enforcement of a demand for a flat 10-cent-an-hour wage increase. The existing scale ranged from 47 cents to $1.12 an hour.

There were other grievances also to be settled, but mostly of an individual nature.

NARUC Convention off

THE 1945 convention of the National Association of Railroad and Utilities Commissioners, scheduled for French Lick Springs, Indiana, September 17th to 19th, has been called off as a result of the unanimous vote of the association's executive committee taken at a meeting in Chicago on July 12th.

This action was prompted by the very difficult transportation situation which now exists and the even more serious situation which the committee was advised would prevail in the future.

Under the terms of an amendment to the constitution adopted two years ago regarding the possible necessity for omitting wartime conventions, the existing officers of the association will hold over for another year. These are John D. Biggs of Illinois, president; Duane T. Swanson, first vice president; Frederick G. Hamley, general solicitor; Ben Smart, secretary.

In addition to the foregoing officers, who are also members of the executive committee,

the following committee members attended the Chicago meeting:

John E. Benton, advisory counsel; James A. Perry, Georgia; Nelson Lee Smith, Federal Power Commission; James W. Wolfe, South Carolina; Harvey B. Apperson (for H. Lester Hooker), Virginia; Paul A. Walker, Federal Communications Commission; Leland Olds, Federal Power Commission; Clyde B. Aitchison, Interstate Commerce Commission; Ben C. Larkin, North Dakota; Ray O. Weems, Oklahoma; Clyde B. Fisher, Connecticut; Joseph E. Conlon, New Jersey; W. F. Whitney, Wisconsin; Carroll L. Meins, Massachusetts; Justus F. Craemer, California; Richard B. McEntire, Kansas; Harry M. Miller, Ohio; C. L. Doherty, South Dakota.

A very full discussion was had on the matter of the holding of the 1945 convention. Commissioner Cannon of Indiana stated that his commission had been compelled to withdraw its invitation to this association to hold its meeting at French Lick Springs due to the inability of obtaining transportation equipment to carry the convention delegates from the nearest railroad junctions to French Lick Springs. Chairman Yoder of Indiana expressed, on behalf of Governor Schricker and the Indiana Public Service Commission, the hope that the association will come to French Lick Springs in the future when the transportation situation has improved. Commissioner Aitchison read a letter addressed to him by Director Johnson which outlined the present and prospective transportation situation. In light of this and other information which was supplied to the committee, the following resolution was adopted by the committee:

"*Resolved,* That the annual meeting of the association for the year 1945 be omitted."

NARUC Group Studies Bills in Congress

THE following legislative bills were considered by the executive committee of the National Association of Railroad and Utilities Commissioners on the occasion of its recent meeting in Chicago:

With respect to HR 3262, a bill extending the so-called thirteenth section powers of the Interstate Commerce Commission to intrastate motor carrier rates, an opposition resolution was adopted which also provided:

"*Resolved further,* That the committee on legislation and the legal representatives of this association are charged with the duty of appearing on behalf of this association in protest against the enactment of HR 3262 or any other legislation of similar character, at any future hearing which may be held thereon before any committee of Congress."

With respect to the administrative procedure bills, the following resolution was adopted:

"*Resolved,* That the general solicitor be instructed to distribute to the several commissions represented in this association a summary statement respecting the administrative procedure bills now pending before Congress, together with any further statement with reference thereto which he may desire to make, accompanied by a copy of the resolution adopted at the 1944 annual meeting of the association relating to said bills."

With respect to the Federal aviation bills, the following resolution was adopted:

"*Resolved,* That this association reaffirms the resolution adopted at its fifty-fifth annual meeting in opposition to the Lea-Bailey aviation bill, and declares its unalterable opposition to any legislation which will operate to destroy or interfere with the right of the states to regulate the rates and services of air carriers operating in intrastate commerce, and

"*Resolved further,* That the executive officers together with the chairman of the committee on legislation and the legal representatives of the association are authorized to determine the propriety of formulating and sponsoring Federal legislation amending and clarifying the Civil Aeronautics Act of 1934 for the purpose of safeguarding state economic regulation of intrastate air commerce."

With respect to the rural telephone bills, S 1115 and HR 3501, 79th Congress, the following resolution was adopted:

"*Resolved,* That the committee on legislation and the legal representatives of the association are charged with the duty of appearing on behalf of this association at any future hearing which may be held on S 1115 or HR 3501, 79th Congress, or any similar bill, before any committee of Congress, for the purpose of seeking an amendment prohibiting the Federal loaning agency from making any loan for the purchase, sale, construction, operation, or enlargement of any telephone line or system unless the consent of the state authority having jurisdiction in the premises, if any, is first obtained."

Alabama

SEC Approves Sale

ALABAMA WATER SERVICE COMPANY'S sale of the water distribution system serving Geneva to the city of Geneva for $40,000 was approved last month by the Securities and Exchange Commission. Proceeds will be used to redeem Alabama's 6 per cent cumulative preferred stock held by its parent, Federal Water Service Company.

Alabama is to consummate the sale within six months.

California

Retroactive Pay Decision

MEMBERS of the AFL International Brotherhood of Electrical Workers, working for the Pacific Gas and Electric Company, will lose more than two months of a retroactive pay increase because of the union's delay in making known its specific demands.

This announcement was made last month by the regional War Labor Board. The board, on May 21st, issued a directive in the AFL union's case against the utility. The directive disposed of all issues except the retroactive dates of wage adjustments and the restoration of pension payments deducted from the salaries of retired employees who had been called back to work.

The board's statement said that "although the dispute was certified on September 29, 1944, the public, industry, and labor members of the board voted to uphold the unanimous recommendation of the panel that the wage adjustments be made retroactive to December 2, 1944, when the union first made known its specific demands."

The usual practice is to make pay increases retroactive to the date of certification of the dispute to the board.

Connecticut

Utility Announces Program

C. L. CAMPBELL, president of the Connecticut Light & Power Company, last month announced that in the next five years the company estimates it will spend $22,000,000 for additional electric generating units, generating unit replacements, additions to transmission and distribution system facilities, and equipment rehabilitation. Mr. Campbell estimates that the company will be able to finance practically all of the above expenditures without having to raise any additional capital, it was said.

The proposed additions to the company's generating capacity include the installation at the Devon power plant of an additional 45,000-kilowatt high-pressure steam unit to be followed by the replacement at the Montville power plant of two 10,000-kilowatt low-pressure units with a new 31,250-kilowatt high-pressure steam unit. The new Devon unit will be practically identical with the fourth unit which went into service there in October, 1942.

The Bristol load has heretofore been supplied by power purchased from the Connecticut Power Company. This contract will be terminated and a new 69,000-volt transmission line will be built from the Southington substation to Bristol to enable that load to be supplied thereafter from the company's own system.

Mr. Campbell said that the speed with which the $22,000,000 improvement program can be gotten under way depends largely on the availability of essential materials and the time in which new power plant units can be constructed.

District of Columbia

Private Bond Sale Permitted

DISTRICT of Columbia public utilities commissioners last month granted a plea by the Washington Gas Light Company for a waiver permitting them to sell $13,855,000 worth of bonds in private sale to nine companies instead of in the open market.

Robert C. Owers, vice president and treasurer of the gas company, estimated public sale would cost $258,550 while private financing would total $77,325 and make it necessary to offer less interest to buyers. Owers said the company planned to offer its issue at 3¼ per cent at a price of 103.87. The bonds would come due in 1970 and pay buyers interest of 2.9 per cent.

The commission, in waiving its regulations requiring competitive bidding, permitted the company to readjust its bonded indebtedness by exchanging 3¼ per cent bonds for 4 per cent and 3¼ per cent bonds now outstanding. In addition the commission ordered that funds raised by sale of the new bonds be used to retire a first mortgage real estate note of the company from Acacia Mutual Life Insurance Company.

The bonds will be purchased as follows: Northwestern Mutual Life Insurance Company, $5,000,000; John Hancock Mutual Life Insurance Company, $3,000,000; Massachusetts Mutual, $2,000,000; New England Mutual, $1,500,000; Acacia Mutual, $925,000; Mutual Benefit Life Insurance Company, $500,000; State Annuity & Investment Board of Wisconsin, $320,000; Provident Mutual Life Insurance Company, $310,000; and Life Insurance Company of Virginia, $300,000.

Iowa

City, Railway Split Cost

THE Des Moines city council has allotted $3,500 for the next fiscal year, the amount to be matched by the street railway company, to pay costs of a survey of city motorbus and trackless trolley wear on city pavements.

Mayor John MacVicar said recently, preliminary to another council discussion of budget proposals, that cost of the study had been estimated at $7,500, and the city had appropriated half that amount with the understanding the Des Moines Railway Company would pay the other half.

The mayor said that, under state legislation enacted in April, increasing from 1½ to 2½ the percentage of bus and curbliner receipts to be paid toward city street upkeep, it was agreed that the higher percentage would be retroactive to January 1st.

C. B. Stull, president of the Citizens Protective League, which prompted the legislation, repeated his organization's contention that books of the street railway company, operator of the busses and trackless trolleys, should be audited to obtain information for guidance of the committee, which would be assigned to determine what portion of the receipts should go to the city for street maintenance and reconstruction.

Kentucky

Tax Group Backs Plan

THE Taxpayers League of Kentucky last month announced adoption of a resolution pledging the support of the organization and its affiliated groups to the citizens committee of the Kentucky Retail Merchants' Association and Edward O. Nobbe, chairman, in the fight for city purchase and operation of the Louisville Gas & Electric plant.

Another resolution pledged support to the employees of the LG&E under municipal ownership, promising that the league would stand behind them in every way possible.

Maryland

REA Loan Permission Sought

THE Choptank Electric Coöperative, Inc., of Denton, last month filed with the state public service commission a petition for authorization of the issuance of a note to the United States government for a $290,000 Rural Electrification Administration loan to cover costs of line extensions.

The coöperative, which operates in nine Eastern Shore counties of Maryland, also asked that the commission reaffirm a previous order for construction of new lines, which had been delayed because of lack of materials and an extension of time in which to complete the project.

The petition said the coöperative had applied to the REA for a loan to finance the construction of the proposed electric system and that the application had been received favorably and a loan agreement for an initial amount had been negotiated.

Michigan

Pushes Repeal Plea

THE Detroit Street Railway last month pleaded with the city council for immediate action on the proposed repeal of a 24-year-old ordinance requiring 2-man operation of streetcars.

"All plans for postwar development of transportation service in the city are being held up pending a decision by the council on this phase of DSR planning," Frank W. Rising, acting president of the DSR commission, said.

The street railway asked repeal of the ordinance last June when the management announced it planned to purchase 80 new streetcars of the speedy, relatively quiet, and 1-man operated PCC type.

A repeal measure was introduced, given a formal first and second reading, and tabled.

Rate Cut Stayed

CIRCUIT Judge Archie D. McDonald, sitting in the Ingham County Circuit Court, on July 9th issued an injunction restraining the state public service commission from enforcing, pending the results of litigation, its order of June 22nd reducing the Detroit Edi-

son Company's electric rates approximately 11 per cent.

The injunction was obtained by the utility to withhold enforcement of the order until the legality of the order and other rate litigation can be heard in the courts. Judge McDonald fixed August 20th for the final oral arguments on the merits of the case.

Assistant Attorney General James Williams and James Lee, assistant corporation counsel of Detroit, acquiesced in the injunction.

At Mr. Williams' suggestion the court agreed to withhold until the next war bond drive next fall the investment of approximately $10,450,000 in money of the company which is held in escrow.

Minnesota

Win Pay Adjustment

A LONG controversy between the street railway company and 2,541 employees, members of the Amalgamated Association of Street, Electric Railway, and Motor Coach Employees, Local 1,005, AFL, was settled last month when the sixth regional War Labor Board in Chicago approved adjustments determined by an arbitration board.

The adjustment allows time and one-half after forty hours each week, adjusts and equalizes work in various departments, and gives the employees a bonus of 1½ cents an hour, retroactive to January 1, 1944, Andrew Wigstrom, president of the street railway union, said.

Two other firms' employees were granted increases. They were the Franklin Transformer Manufacturing Company and the Electrical Manufacturing & Engineering Company of Minneapolis. The United Electrical Radio and Machine Workers, Local 1,139, CIO, joined with the firms seeking the raise.

Nebraska

Asks Withdrawal of Actions

OMAHA City Commissioner Roy N. Towl last month suggested that the city council consider withdrawal of "any or all" proceedings which the old city council brought against the new Nebraska Power Company. Towl said he thought the council should do everything possible to clear the way for formation of the new Omaha Public Power District, for which petitions were then being circulated, it was reported.

Pending actions, all of which were instituted by the former city council, included: an ordinance calling for condemnation of NPC properties within the city; an ordinance demanding a $1,000,000 reduction in rates charged electric users in Omaha; a district court lawsuit asking cancellation of the local group's purchase of NPC common stock; a resolution canceling the company's operating franchise; and a Federal court lawsuit brought by preferred stockholders of the company, to which the city is a party.

New Mexico

Starts Rate Base Study

THE state public service commission last month announced it had initiated valuation proceedings preliminary to studies of the rate bases of five utility companies. Valuation hearings, beginning August 8th and to continue until completion, were set for these companies:

Santa Fe water and electric division of New Mexico Power Company, Las Vegas Light & Power, Deming Ice & Electric, Dawson division of New Mexico Power Company, and Aqua Pura water division (Las Vegas) of New Mexico Power Company.

"These hearings are designed to provide information on valuations by which the commission can determine whether present rates are adequate or too high," Chairman W. W. Nichols said.

Pennsylvania

Rate Increase Refused

THE state public utility commission on July 14th turned down the Equitable Gas Company on a rate increase. The utility's present rates are "just and reasonable" and a boost isn't merited, the commission ruled.

The commission at the same time dismissed

a complaint against the public utility's existing tariffs.

The PUC pointed out that Equitable's operating income already is about $140,000 in excess of the allowed return of $2,015,000.

CIO pressure was applied recently to support Pittsburgh's fight against proposed new Equitable Gas Company rates.

Regional CIO Director Anthony J. Federoff wrote Governor Edward Martin urging that the governor take interest in the state public utility commission proceeding.

He was referring to the fight between the city and the state utility commission over the introduction of rate evidence at hearings.

State FEPC Fight Renewed

FEDERAL and state laws to guarantee the right to work without discrimination of race, creed, or color were urged on July 10th by the new Pennsylvania Committee for a Permanent Fair Employment Practices Commission. The executive board of the committee, set up at a meeting of representatives of 12 county FEPC committees and state organizations backing the movement, called on Pennsylvania Congressmen to:

Work for a restoration of the full appropriation for the Federal FEPC.

Sign a petition to force out of committee for floor action a bill to make the Federal agency a permanent branch of the government.

Michael Johnson, temporary chairman of the state committee, said plans also were discussed for circulating petitions among voters calling on Governor Martin to summon a special session of the legislature for creation, among other things, of a state Fair Employment Practices Commission.

Five measures to handle the problem of job discrimination on a statewide basis were before the 1945 general assembly, but all died in committee.

Texas

Ratable Gas Take Viewed

A CASE to test the state railroad commission's authority to require ratable taking in natural gas fields was proposed recently by Chairman Olin Culberson, of the railroad commission.

"I am ready and willing, if my colleagues are, to see if we can apply the doctrine in the Bammel Case (Corzelius *v.* Harrell) to all matters affecting the gas industry where in the judgment of the commission it is necessary to enter such orders for prevention of waste," Culberson asserted.

The chairman said distribution of markets among all producers on a ratable basis would not be popular with many purchasing companies.

"But I believe ratable taking is just as necessary for gas as it is for oil, and in the long run I believe the industry will come to realize it," Culberson predicted. "It will promote better relations with the producers, the royalty owner, and with the public."

Culberson said "the only way we can find out how much authority the commission has is to try it out." He recalled that his testimony before the state legislature included a statement that the commission would have too much power for any three men if the Supreme Court's opinion is considered in its broadest terms.

Washington

Utility's Income High

FOR the first time in Seattle City Light's history, its gross revenues have exceeded $10,000,000 for a 12-month period, Lighting Superintendent E. R. Hoffman reported recently to Councilman Bob Jones. Revenues for the year ending May 31st total $10,004,045.52.

At the end of May, meters on City Light lines totaled 113,476, or an increase of 1,905 over the latest previous reported total, while ranges had increased 2,265 to 58,411.

Value Shows Jump

THE total value of public utility companies in Washington jumped to $407,548,390 in 1945 from $400,099,360 in 1944, an increase of $7,449,030, Tax Commission Chairman H. H. Henneford said recently.

The largest increases were evident in electric light and power companies and telephone companies, Henneford said.

The valuation of telephone companies was fixed at $51,839,000, a gain of $4,550,000 over the $47,326,500 in 1944. Power companies jumped $2,905,000 from the $113,371,500 valuation of 1944 to $116,151,500 in 1945.

Puget Sound Power & Light Company led others in the power field, having a 1945 valuation of $62,800,000 as compared to $60,990,000 in 1944.

Leader in the telephone company group was Pacific Telephone & Telegraph Company with a 1945 valuation of $46,400,000 as compared to $42,000,000 last year.

The Latest Utility Rulings

Court Refuses to Restrain Accounting Inquiry by Federal Power Commission

THE review of orders of the Federal Power Commission under § 313(b) of the Federal Power Act, 16 USCA § 825 l, is exclusive, according to a ruling of the district court of the United States for the District of Columbia. Therefore, the court held that it had no jurisdiction over the subject matter of a complaint by the Arkansas Power & Light Company to restrain the commission from making an investigation of accounts.

The complaint sought (1) an injunction to restrain the commission from taking further action in a pending proceeding, and (2) a declaratory judgment that exclusive jurisdiction over the company's primary books of accounts and of entries made and to be made therein is vested in the department of public utilities of the state of Arkansas. The company admitted that it was a public utility subject to the jurisdiction of the commission.

The department of public utilities of Arkansas was made a defendant in the action, and it filed a cross-claim seeking relief similar to that sought by the company. The department and its commissioners had not intervened nor sought to intervene in the proceedings before the Federal Power Commission.

Section 313(b), said the court, provides that any party to a proceeding under the act, aggrieved by an order issued by the commission, may obtain a review in an appropriate circuit court of appeals. The court, after stating that this method of review is exclusive, added that the Federal Declaratory Judgment Act, 28 USCA 400, does not confer upon the court jurisdiction which it does not otherwise possess.

The position of the state officials was said to be governed by the same principles. They could not escape them by failing to seek relief in the proceeding pending on the commission's docket, about which they complained. They might file a petition for intervention, and, if this were allowed and they were aggrieved by an order thereafter issued, they might obtain a review of the order. If the petition to intervene were denied, they might obtain a review of that order.

It was also pointed out that the administrative remedies under the Federal Power Act had not been exhausted and no one is entitled to judicial relief for a supposed or threatened injury until the prescribed remedy has been exhausted.

The court also observed that the substantive question raised by the company and the state officials appeared to have been settled adversely to their contention in Northwestern Electric Co. *v.* Federal Power Commission (1944) 321 US 119, 88 L ed 596, 52 PUR(NS) 86, 64 S Ct 451. *Arkansas Power & Light Co. v. Federal Power Commission et al. (Civil Action No. 27451).*

Electric Rates Fixed for Government Housing Project

THE North Carolina commission established for a government housing authority an electric rate schedule providing for a rate of 5 cents per kilowatt hour for the first 100 kilowatt hours, with decreasing rates for higher blocks

of energy, resulting in a rate of 2½ cents per kilowatt hour applicable in a 3,500 kilowatt-hour block following the first 1,500-kilowatt-hour blocks. The next 200 kilowatt-hours' use of demand is to be 2 cents per kilowatt hour and the excess 1.75 cents per kilowatt hour.

Energy is to be available at primary distribution voltage for these projects where energy is sold through one master meter for each project and not used for resale service, except that customers may distribute energy to tenants of a project as an incident of tenancy. Meter readings will not be grouped for billing purposes.

Chairman Winborne had declared that Schedule No. 2, under which the housing authority sought service, was limited to service to an individual building and its adjuncts and therefore was not open to housing projects which had more than one building in a unit. The new schedule was offered by the commission's rate expert.

Commissioner Johnson, in a dissenting opinion, said that the authority had been buying from the Tide Water Power Company the electric energy consumed by the families residing in apartments at $2.20 per hundred kilowatt hours for residential service. Other customers of the company living in and around the city of Wilmington were paying $4.11 per hundred kilowatt hours for residential service. Residents of other counties were paying $4.53 per hundred kilowatt hours. He continued:

> The Federal Housing Authority paid to the Tide Water Power Company $151,989.60 for electric energy used by the residents of these apartments during the past twelve months.
>
> If the families occupying these apartments had paid the same rate for electric energy used as other residents of the territory, then the Tide Water Power Company would have a surplus of approximately $160,000 which could have been used as a rate reduction for residential users.
>
> This commission, in arriving at rates which shall be applicable to the housing project, as well as other customers, must first determine what rate is necessary to give the power company a fair and reasonable return based on a fair and reasonable investment. If the rates approved are not sufficient to give the power company the necessary funds for operation, etc., then, and in that event, the rates would have to be increased. If the rates approved are higher than is necessary to give a fair return then the customers are entitled to a rate reduction. If the Tide Water Power Company is permitted to sell electric energy to a customer or customers at a rate lower than the cost of production, distribution, etc., then the other customers of the company have to make up for this loss by paying an increased rate. I am unwilling for a residential customer, whether he lives in a government apartment, a rented or his own house, to buy or use electric energy bought at a rate cheaper than is paid by all of the residential customers served by the same company. A citizen living in a government-owned house should have no advantage over the citizen living in his own house.
>
> If it is possible, and I think it is, that the Tide Water Power Company could stand a rate reduction, then I think every residential customer should be treated alike and receive the same reduction.

Re Tide Water Power Co. (Docket No. 2888).

Bonus Arrangement with Labor Union As Rate Case Element

THE New York commission, in a proceeding relating to fares of the Syracuse Transit Corporation, made full allowance for a bonus to employees under a bonus plan approved by the War Labor Board and the Director of Economic Stabilization. This bonus attempts to compensate the company employees for the increased and unusual wartime work load. The commission said:

> The formula in effect determines what the wages would be per vehicle mile if they increased (since 1941) in the same proportion as revenue, increased revenue indicating increased productivity. From this is subtracted current wages reduced by the 15 per cent permitted under the Little Steel formula. The difference is set forth as an increase in productivity not compensated for in current wage rates. There is a 7-cent-an-hour ceiling on such bonuses. The bonus formula and bonus payments thereunder are in no way

related to the company's net operating revenues. It is apparent from the testimony of Messrs. Brien and Collins, representing the employees' union, that bus employees' work under present overcrowded conditions is decidedly more difficult than it was prewar. Upon the records herein, I do not question that the employees should receive this additional compensation.

Mr. Doran, counsel for the commission, pointed out that the bonus plan approved by the National War Labor Board was granted on the condition that the company would not use this bonus for an application for a fare increase or to resist an otherwise justifiable fare decrease.

An exhibit was presented by the union to show that if the token rates were 7 for 50 cents, there would be a reduction of $25 a year in bonus per union member; a token rate of 8 for 50 cents would result in a $50 reduction; a token rate of 4 for 25 cents would result in a $75 reduction. There was testimony indicating that prevailing wage rates for mechanics in the city were substantially higher than those in effect, including the bonus, for company employees. The commission declared:

> Rate reductions should not be used as a basis for reducing the compensation paid to employees. As has already been shown, this matter is complicated by the contract between the company and the union. However, this is a matter for the union and the company to work out with the national agencies. Quite obviously this commission cannot become involved in any wage agreements or negotiations with the War Labor Board, nor be restricted in applying the standard fixed by law for reasonable rates. It is not reasonable that an arbitrary formula for computing the additional compensation should be used to prevent a just reduction in rates of fare paid by the public.

Re Syracuse Transit Corp. (Case 11623).

Organization of Power District

THE supreme court of Wyoming upheld a judgment denying a petition for organization of a power district under state laws. The case involved the validity and application of statutes enacted in 1931 and 1933.

It was pointed out that a statute requires that application for operating authority should be made by the signers of the petition for the creation of the district and not by the proposed district, since the district has no legal entity until created by the courts. No certificate of convenience and necessity from the state public service commission was attached to the petition, as required by the 1931 law, as it was alleged that the district did not intend to construct a new or competing system, but to acquire an existing system. It was further alleged that under the 1930 law no such certificate is required.

The court, after reviewing the statutes, did not believe that it would have a right to say that the requirement of a certificate was unnecessary. If the legislature had intended to waive that requirement when bonds issued by the district were to be revenue bonds, it would have been an easy matter to say so.

The commission, it was said, is required to be satisfied of the financial ability of the applicant before issuing a certificate. The further ruling was made that a power district does not have authority to purchase a municipal electric light plant and to issue revenue bonds in payment therefor or to include a municipality within the district. *Re Sheridan County Power District, 157 P(2d) 997.*

Mailing Petition Not Sufficient Compliance With Time Limit Requirement

A PETITION verified on April 16, 1945, and by letter dated April 16, 1945, forwarded to the New York commission and received at the commission's office on

April 17th, was held by the commission not to constitute an application made within thirty days of an agreement with a municipality signed on March 17th. The agreement was for modification of a local consent to bus operations, made conditional upon the company making application to the commission for the necessary approval and authority within thirty days from the date on which the contract was signed.

Counsel for the petitioner argued that timely application had been made since the petition was placed in the mail on the thirtieth day, and that in any event the only one who could raise the objection was the municipality, which had not done so. Counsel for the commission argued that the modification of the local consent contained a conditional limitation on the life of the consent, and that application not having been made in time, the modified consent ceased and determined. The company, not having applied in time, had no valid modified local consent on which the commission could base an amendment to the existing certificate of public convenience and necessity. Commissioner Arkwright said:

> The mere placing of the petition in the mails, to be received at the office of the commission at some subsequent time which might be a day or longer, or even not at all if the petition were lost in the mail, in my opinion, is not making application to the public service commission. Surely, no one would argue that even if the petition were forwarded with all good intent, and never received, timely application had been made. This section, for reasons best known to the city of New York, places a limitation of thirty days within which application to the public service commission must be made. It specifies that unless this application is made within that time, the rights granted in the modification agreement shall cease and determine.

Re Manhattan & Queens Bus Corp. (Case 11950).

City's Power Contract Restricting Own Operations Not a Plant Sale

A CONTRACT between the city of Fort Valley and the Georgia Power Company under which the company would supply electricity for five years was held by the supreme court of Georgia not to be a contract under which the city was undertaking to sell or lease its plant or a part thereof, or otherwise to part with title or right of possession. If the contract had amounted to a sale, lease, or other disposition of plant or property, a prescribed statutory procedure would have been necessary.

The basis for the contention that this did amount to such a sale or other disposition of property, made by a citizen and taxpayer in an injunction proceeding, was the fact that the city restricted itself in operating its own electric plant. The city agreed that it would not itself manufacture current for resale beyond a limited stated amount. It agreed that it would not sell current to users of more than 100 horsepower, with certain noted exceptions, nor would it manufacture its own current for resale to customers or use any electric service from any other source, or serve any customer using current in quantities of 500 horsepower or more.

The contract also granted to the company the right to use the streets and alleys of the city for the purpose of erecting and maintaining its own poles, wires, and other equipment. The contract, however, did not require the city to give up its own municipal lighting plant or its distribution system, although its use was limited as stated above.

The nonexercise of the city's right to generate current, with the small exception, related to a passive attitude on the part of the city, said the court, whereas a disposition of a part of its plant would call for affirmative action. The court continued:

> An obligation on the part of the municipality not to generate but a certain designated

per cent of electrical energy could not in any sense be said to be a disposition of a plant or any part of it. Not only is the contract and franchise to the power company silent as to any suggestion that the city will sell, lease, or otherwise dispose of its plant, but on the contrary it would seem that it was expressly recognized that the city would not dispose of it . . .

Brown v. Mayor, etc. of Fort Valley et al. 33 SE(2d) 705.

Other Important Rulings

OPERATION of public utilities by a municipality for service to its inhabitants was held by the supreme court of Indiana to constitute a proprietary rather than a governmental activity, in a case where it was held that the income from operation of water, electric, and gas utilities was subject to state gross income tax. *Department of Treasury v. City of Linton, 60 NE(2d) 948.*

The Wisconsin commission authorized the elimination of free interexchange service between exchanges of separate telephone companies about 25 miles apart and the establishment of a toll message rate of 10 cents per call where the communities were distinct trading areas with few common interests, use of the service was restricted to a minor portion of the subscribers of both companies, and the demand upon the one existing interexchange circuit had in the past been such as to result in inadequate service. *Re Amery Electric Co. (2-U-2019).*

The Wisconsin commission authorized the elimination of free interexchange service and establishment of a toll message rate of 5 cents per message, for a trial period, between exchanges of separate telephone companies about 5½ miles air-line distance apart where the communities were commercially interdependent, free interexchange service was inadequate to serve the demand, and a nominal toll rate would curtail use but be low enough so that the public would not be discouraged from the use of the service. *Re Amery Electric Co. (2-U-2020).*

The Wisconsin commission, in authorizing increased rates for a telephone company, held that the practice of requiring subscribers to maintain telephone instruments is not consistent with reasonably good service. *Re Iowa County Telephone Co. (2-U-2034).*

Certificates granted by the Interstate Commerce Commission authorizing motor carrier transportation across a river were held in a Federal court case not to authorize transportation under the river by use of a tunnel. *Adirondack Transit Lines, Inc. v. United States et al. 59 F Supp 503.*

The Wisconsin commission expressed a preference for a comparison of railroad station expenses with gross amount of business transacted at the station instead of a comparison of station expenses and revenues, in passing upon an application for authority to substitute caretaker for agency service at a station. *Re Chicago & North Western Railway Co. (2-R-1639).*

A Federal District Court, in upholding an order of the Interstate Commerce Commission denying "grandfather" rights to a motor carrier, held that expansion of operations during pendency of a proceeding before the commission was made at the risk of the applicant and he could not complain upon denial of such a certificate that he was deprived of property without due process of law; that the current magnitude of his operations, except in so far as they contributed proof of bona fide continuance of operations after the effective date of the Motor Carrier Act, was no measure of the applicant's rights, but might be highly instructive upon the issue of actual public convenience and necessity if an applica-

tion for a certificate be presented on that basis; and that a mere holding out to render service is not enough to warrant the granting of a certificate, since the holding out must concur with bona fide operations. *Watson Brothers Transportation Co. Inc. v. United States et al. 59 F Supp 762.*

Specific contracts of common carriers inconsistent with terms of tariff schedules are generally void, it was said in a decision of the supreme court of Washington, where it was held that an air carrier could not be held liable to a passenger for breach of alleged agreement to effectuate transportation within a certain time limit, since the agreement was void as in violation of a tariff regulation that the carrier could cancel any flight without becoming responsible for delay. *Jones v. Northwest Airlines, Inc. 157 P(2d) 728.*

A marketer of petroleum products, which, in consummating sales, gave shipping instructions and signed bills of lading as consignor, was held by a Federal court to be a shipper prohibited by statute from receiving rebates, concessions, or discriminations in freight rates, even though it paid no part of the freight, such rates being paid by the customer or consignee. *Ohio Tank Car Co. v. Keith Railway Equipment Co. 148 F(2d) 4.*

The supreme court of Utah held that a mutual water company could compel individual stockholders to install water meters or pay the company for cost of installation and, having installed meters, could compel payment by a stockholder for water used by him in excess of the amount to which his stock ownership entitled him. *Big Cottonwood Tanner Ditch Co. v. Kay et al. 157 P(2d) 795.*

A Federal court, upholding an order of the Interstate Commerce Commission which denied in part an application for a certificate of convenience and necessity under the "grandfather" clause of the Motor Carrier Act, ruled that the commission did not err in refusing to receive evidence tending to show that public convenience and necessity would be served; that the commission has jurisdiction over unification of separate properties into one ownership occurring when "grandfather" rights are granted to a motor carrier who has acquired duplicate rights from another carrier during the pendency of its proceeding, and in such proceeding the commission may eliminate duplicate rights; and that a certificate issued under the "grandfather" clause would authorize the carrier to transport additional commodities not previously produced in the territory served on the effective date of the "grandfather" clause. *Elliott Brothers Trucking Co. Inc. v. United States et al. 59 F Supp 328.*

Where the Interstate Commerce Commission has established rates and the only question is whether a commodity is a commodity referred to in the rate schedule, a Federal District Court holds that a question of fact is presented over which the courts have original jurisdiction and the court may thus go forward before the commission has acted. *Murray Co. et al. v. Gulf, Colorado & Santa Fe Railway Co. et al. 59 F Supp 366.*

The court of civil appeals of Texas held that where a motor carrier applied for authority to transport only war materials for the War and Navy departments over all highways of the state, the trial court erred in treating the commission's order as a certificate instead of a contract carrier permit and in striking down the order on the ground that requirements of the statute relating to common carriers had not been complied with, since the order involved was more in the nature of a contract carrier permit, even though the applicant did not have a contract with the War and Navy departments. *Victory Truck Line, Inc. et al. v. Red Arrow Freight Lines, Inc. et al. 186 SW(2d) 98.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Points of Special Interest

Titles and Index

TITLES

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PUBLIC UTILITIES REPORTS

MICHIGAN PUBLIC SERVICE COMMISSION

City of Detroit

v.

Detroit Edison Company

D-1722
May 22, 1945

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By the COMMISSION: This opinion is the result of a thorough consideration of the complete record before the Michigan Public Service Commission in the matter of the petition of the city of Detroit to investigate the rates and charges of the Detroit Edison Company.

[1, 2] These proceedings pose the problem as to what part of the abnormal war taxes of the Detroit Edison Company for the year 1944 and

1945 are avoidable. On the 4th day of August, 1944, we handed down our opinion and order in which we found that the Detroit Edison Company proposed to include in its operating expenses for the year 1944 an item of $1,518,000 as an addition to its reserve for postwar adjustments. The company at that time proposed to treat this item as an expense. We considered that such an expense, if it were correctly designated in the first instance, represented an avoidable and an unnecessary expense. The disallowance of such an unnecessary item would be reflected in the over-all return to the company. This Commission accordingly ordered the company to reduce its gross revenues $10,450,000 of which amount $1,500,000 represented an unnecessary expense and approximately $9,000,000 represented avoidable Federal taxes.

The Commission is of the opinion that in ordering the reduction which it did for the year of 1944, it arrived at a just and a correct result and it reaffirms its order in that respect.

In the case of Detroit v. Public Service Commission (1944) 308 Mich 706, 54 PUR(NS) 65, 14 NW(2d) 784, the Michigan supreme court held that avoidable taxes are an unnecessary item of expense. This Commission has the duty of determining whether or not such taxes are avoidable in fact. The taxes here dealt with are Federal income taxes and they are directly related to income.

The Commission is under a statutory duty to fix just and reasonable rates. This is considered to require that a reasonable return be allowed to the company. The problem presented is that of determining the breaking point so that a reasonable return under present wartime conditions is assured to the company and at the same time remove any unnecessary tax burden from the consumers.

Hereinafter, under the subheading History of Proceedings, we deal in more detail with how these proceedings originated and their method of again reaching us for our decision.

History of proceedings

On the 26th day of October, 1942, the city of Detroit filed with the Michigan Public Service Commission a petition seeking an order to show cause against the Detroit Edison Company as to why its rates should not be reduced. The petition was treated by the Commission as though it were in fact two petitions.

The first petition, so considered, requested a discount on the November and December bills of 1942. The second petition sought the fixing of reasonable rates to be applied by the Detroit Edison Company as of the 26th day of October, 1942, and for the reasonably foreseeable future. Several municipalities and other parties intervened.

The first petition was dismissed by an order of the Commission on December 4, 1942. In discussing the city's first petition, the Commission stated that it did not pass upon the equity or good faith of the city's position in that the latter desired an early review of questions of law involved; to the end of expediting such review, a final order of dismissal of the first petition was made on the basis that the Commission possessed neither the power nor authority to do that which the city asked.

Upon dismissal of the first petition,

hearings were resumed the same date, being held intermittently until May 25, 1943. During the period from November 6, 1942, the initial date of hearing on the first petition, and the conclusion of hearings on the second petition, there was introduced onto the record 2,020 pages of testimony and argument and 108 exhibits.

On July 17, 1943, 50 PUR(NS) 1, the Commission dismissed the second petition for a reduction in the rates charged by the Detroit Edison Company. The reasons given for the dismissal were that since the petition was based substantially on the claim that the so-called excess profits taxes, or war taxes, paid to the United States Treasury should be diverted to the ratepayers of the company, the Commission had no authority to exclude such lawfully incurred taxes from operating expenses. And further, that under such circumstances the rates charged by the company were reasonable, and that the rate of return was not excessive.

The city and the intervenors appealed and the Michigan supreme court remanded the case to the Commission. The court held that the Commission does possess discretionary authority to exclude those items from public utility operating expenses which place unnecessary burdens upon the consumer. Further, the court held that in the balancing of consumer interest and investor interest, "avoidable" taxes should be excluded from expenses and at the same time a reasonable return to the investor must be provided. Detroit v. Public Service Commission, *supra*.

Upon the remand, further hearings were held. These began June 8, 1944, and special emphasis was given to consideration of the impact of excess profits taxes. Complete testimony was taken upon all elements of a utility rate case bringing the data up to date at the conclusion of hearings on July 26, 1944. During this phase of the case, 846 pages of testimony and 78 exhibits were introduced.

On August 4, 1944, the Commission ordered that a gross amount of $10,450,000 less cost of distribution be refunded to electric customers during 1944. The Detroit Edison Company, contending that such action was arbitrary, unlawful, and not justified by the facts presented to the Commission, took an appeal.

A bill of complaint was filed in the Ingham county circuit court on the 4th day of August, 1944. The city of Detroit and other parties intervened. Hearings before the court commenced October 10, 1944, and continued for several days. At the hearings additional testimony was taken on behalf of both the plaintiff and defendants.

On January 2, 1945, the testimony taken before the court was transmitted to this Commission under the provisions of the statute relating to review of Commission orders. The statute (Act 300, Pub Acts 1909, § 26), provides that, when further and additional testimony is taken before the court, the testimony shall be transcribed and transmitted to the Commission. Upon receipt of such transcript, the Commission is to consider the entire record and report back to the court. At this time the Commission may rescind, alter, modify, or affirm its order. If it alters or modifies the order, the amended order is substituted in place of the order under review.

On January 10, 1945, the Commission requested the interested parties to present their suggestions for modification and amendment of Commission's order, dated August 4, 1944. The suggestions were considered and arguments heard on January 25, 1945.

In November, 1943, the common council of the city of Detroit passed an excise tax ordinance imposing a tax upon the certain utilities operating under franchises in the city of Detroit. Since this tax, as defined, created certain expense obligations upon the company, it was a matter of considerable argument and testimony in the proceedings in the present rate case. The validity of the ordinance was contested in the Wayne county circuit court, and on February 6, 1945, the court declared the same to be unconstitutional and void.

In all the proceedings before the Commission prior to this decision the ordinance had been presumed to be valid. After the decision of the Wayne county circuit court became known, at the request of the Detroit Edison Company, the Commission asked the several parties to come before it and express their opinions as to the effect, if any, of the Wayne decision upon these proceedings. Several conferences were held thereafter.

At a conference on April 9th, counsel for the city of Detroit stated that, in his opinion, further proceedings before the Commission and the courts in the rate case might be seriously hampered by the excise tax issue; that he thought that the tax ordinance should be repealed and he requested an adjournment. An adjournment until May 7, 1945, was granted for that purpose so that the matter could be presented to the common council of the city of Detroit. The ordinance was repealed on April 10, 1945.

At approximately the time when the city of Detroit enacted its tax ordinance similar excise tax ordinances were enacted by the neighboring cities of Dearborn, Hamtramck, Hazel Park, and River Rouge. All of these ordinances save that of Hamtramck have been repealed. The impact of of this tax, if it is not repealed, will be discussed under operating expenses.

On the 7th day of May, 1945, the Commission received from the parties notice on the record that the ordinances imposing the several excise taxes had been repealed; and the Detroit Edison Company submitted a memorandum of its position concerning its creation of a postwar reserve.

The hearing of the 7th day of May, 1945, concluded all proceedings before the Commission and the Commission is of the opinion that it should now make its report back to the Ingham county circuit court in accordance with the provisions of the statute.

These are proceedings to fix rates for the Detroit Edison Company. They differ from the usual rate proceedings only because of conditions and factors that have been introduced as the result of the war. These additions include the following: The war taxes levied by the Federal government and in particular such part of those taxes usually referred to as the excess profits taxes; the excise tax ordinances of the several cities; war necessity certificates and the postwar reserve which the company claims to have accumulated through the use of such certificates; and accelerated depreciation. The problem presented is how

many, if any, of these unusual wartime items are to be included as expenses, for rate-making purposes.

One of the Michigan statutes provides as follows: "In determining the proper price, the Commission shall consider and give due weight to all lawful elements properly to be considered to enable it to determine the just and reasonable price to be fixed for supplying electricity, including cost, reasonable return on the fair value of all property used in the service, depreciation, obsolescence, risks of business, value of service to the consumer, the connected load, the hours of the day when used and the quantity used each month." (Act 106, Pub Acts 1909, § 7.)

Excess Profits Taxes

[3-6] Under the Revenue Act of 1942, corporations, under certain circumstances, are required to compute their "excess profits tax net income" which is the upper bracket income over certain exemptions. To this "excess profits tax net income" is applied a tax rate which is in effect a tax of 85.5 per cent. The residual, or 14.5 per cent, remains with the corporation. To the extent the residual is necessary to a fair return for the Detroit Edison Company, the said tax is not avoidable, and is a necessary element of expense.

However, in the determination of the avoidability of excess profits taxes, other items claimed as expense affect the determination of avoidability. To take from the company one dollar of other avoidable expense, such as provision for postwar adjustments, a reduction of approximately $7 in gross revenues may be made. This is true because of every $7 taken from gross revenue the United States Treasury loses $6 and the company one dollar of its net return.

In its release of January 19, 1944, the Treasury Department stated that it would accept any loss of revenues resulting from the fixing of reasonable rates.

To reach the end result, the usual methods of evaluation of the adequacy and reasonableness of return must be used; and such determination must rest upon an objective basis, properly correlated to economic conditions prevailing during wartime.

It has been contended by the city of Detroit in this case that a liability for excess profits taxes in itself is conclusive that the utility is making excess profits. Considerable discussion during the case was given the matter concerning excess profits taxes in relation to normal taxes and the percentage or amount of income tax allowable or "avoidable," as the case may be, as an operating expense.

There are two points of view concerning whether or not a regulated utility should be permitted to incur a liability for excess profits taxes.

The first view assumes that the primary function in rate regulation is to make certain that no excess profits are produced to the end that there is no liability for, excess profits tax. The second involves the assumption that excess earnings, from otherwise normal rates, are due to stimulation by war factors, and that such excess earnings of a utility company should not be immune under such conditions from carrying their share of the war tax burden.

Exhibit 178, introduced at the hear-

ing before the Commission, shows that of the gross revenues of the Detroit Edison Company 16.35 per cent of its 1943 gross revenues were paid to the Federal government in normal, surtax, and excess profits tax. The electrical utilities of New York city paid 6.21 per cent, Chicago paid 10.12 per cent. The weighted average of the electrical utilities in the country's ten largest cities, excluding Detroit and Los Angeles, was 9.42 per cent. Such is the result of the application of the second viewpoint. This Commission considers its duty to be that of fixing reasonable charges to the end that rates paid do not impose upon the ratepayer inequitable burdens.

Closely associated with the subject of excess profits taxes and of special importance in this case, are war necessity certificates and the related tax savings. The reports of the company show that certain amounts have been included in special expense accounts in lieu of the accrual for Federal income and excess profit taxes, but which are not paid because of certain allowable deductions under the tax statutes. These special accounts are: "Provision for accelerated depreciation" and "provision for postwar adjustments."

Section 124 of the Internal Revenue Code, 26 USCA § 124, provides a means whereby property constructed to promote the prosecution of war may be amortized for income tax purposes by charges to income over a 5-year period, or over a lesser period if the war should end before the lapse of the five years. Such amortization may be discontinued, but the cost on which future depreciation allowances will be made by the Bureau of Internal Revenue is reduced to the extent that amortization has been allowed. In order to exercise this amortization privilege, a necessity certificate covering the facilities must be issued by the Secretaries of War or Navy or the War Production Board.

Election to amortize on a shortened period not related to the probable period of life of the property covered by the certificates brings about a reduction in the amount of income subject to excess profits tax. This allowable tax deduction necessarily brings about a "tax savings." As to whether this resultant tax savings is an allowable expense item or is an increase in net income was a subject of much controversy in the present case.

The Detroit Edison Company obtained war necessity certificates covering $14,348,000 of newly constructed property consisting mostly of new generating equipment. Amortization of these costs over a 5-year period results in a reduction of Federal taxes for the year of $2,028,000. An equivalent amount, according to the annual report of the company to stockholders, was treated as follows: $1,518,00 was charged to expense for postwar adjustments; $510,000 was charged to expense for accelerated depreciation and like amounts were credited to reserves similarly designated.

According to the report of the committee on Accounts and Statistics adopted by the National Association of Railroad and Utilities Commissioners and reported on page 255 of its 1943 proceedings "only the amount which it is anticipated will actually be payable for Federal income and excess profits taxes can be included in the expenses of a public utility under the

systems of accounts now in effect. The so-called 'provision in lieu of taxes' (or provision for postwar adjustments) may not be entered as an expense of the utility, nor may the amount of taxes which would have been payable, had certain statutory deductions not been available, be recorded as the tax expense."

According to further recent interpretation by the accounting committee of the NARUC of its Uniform System of Accounts for Electric Utilities which is substantially in accordance with that adopted by the Michigan Public Service Commission, the following rule has been unanimously approved: "For accounting purposes no charge can be permitted in operating expenses except for expenses actually incurred during the period for which the income statement is prepared. Provisions for future expenditures properly made during a current period must be made by means of an appropriation of net income."

Further: "The inclusion as an operating expense of any portion of tax savings, regardless of how they are described or of what they are to cover, is entirely unwarranted. Only the actual tax paid (or payable), reduced by taxes on nonoperating income, can be allowed as Federal income and excess profits tax in a rate-making proceedings."

This Commission after thorough investigation of the matter finds that the expenses shown on the income statement should not exceed the total actually paid or payable for a current period.

While it is recognized that the accountant in preparing an income statement must be guided by certain principles of accounting and interpretations in arriving at the proper determination of net income, however, that determination must be such as to preserve equity between all essential interests and furnish a sound figure for business administration and rate regulation.

In this connection we find that the "tax savings" involved here are not an expense item and should not be so considered; instead, they are a part of income. As a part of income they may be dealt with as dictated by any good managerial or accounting policy. The amounts involved in tax savings should have been charged to Miscellaneous Reservations of Net Income, Account 540, and credited to Miscellaneous Reserves, Account 258.2. The company violated instructions of the Commission's prescribed system of accounts in treating the matter as they did.

Steam-Heating Utility

[7] The investment in steam-heating facilities of the Detroit Edison Company is approximately $15,000,000. It does a gross business of approximately $2,500,000 per year.

In the company's presentation before the Commission it has maintained that the steam-heating business is an essential adjunct to a substantial portion of its electric business. It further contends that the two services are so interconnected and interdependent it is impossible to consider the facilities of the two departments separably and therefore they should be considered as one integral utility.

We find the steam-heating business is separable and that it should be so treated, which is the same treatment

the company now accords its gas and water business.

It is a fundamental principle of utility regulation that each type of utility service should be self-sustaining. It is inequitable to allow the losses of one type service to become a direct burden upon another type of service. It does not appear appropriate that the steam-heating division of the company should be consolidated with the electric division.

The company says it has recently secured the electric business of certain large buildings in the downtown area of Detroit because of its ability to furnish steam heat to the same buildings. Had there been a separate steam-heating utility company in that area, there is little doubt that under wartime conditions this heating business could have been obtained by such a company. Because the Detroit Edison Company is the only company furnishing heat, unavoidably they obtained both the electric and steam-heating business.

Rate Base

The determination of a rate base and resultant "fair value" requires the exercise of judgment and a consideration of the circumstances of the case. The Commission has considered the testimony introduced before it on this subject including reproduction cost new, estimated "fair value" and book cost. Each of these elements are discussed as to their relation to the determination of the found rate base.

Reproduction Cost

[8] The Commission received testimony by Dr. Henry Riggs and Charles Landrigan concerning what the company characterizes as the "cost of reproducing" the properties of the Detroit Edison Company.

The cost of reproduction was developed by use of the book cost figures of the tangible plant factored by 5-year average (1937–1941) index numbers related to costs in 1915. Using 1915 as 100, a composite index number was developed for groups of property from the above factored costs as applied to classes of property within a group. The percentage of each class of property was used as "weighting" to determine a single index number for a particularized property group.

The percentage of each class in relation to a group was obtained from a study of the property of the Ohio Edison Company and it was assumed that the properties were similar in construction and therefore the same percentages could be applied in arriving at a reproduction cost figure for the Detroit Edison Company properties. The Ohio property was one-fourth the size of the Detroit Edison Company property.

Although he testified to this reproduction cost, the witness, Dr. Riggs, admitted that during periods of violent price fluctations such a determination of fair value was impossible to make with any degree of certainty.

At the hearing before the Commission, Dr. Riggs said: "In my studies of valuation during the forty years, I have found in the history of the United States every time that there has been a war, there have been such violent fluctuations and such great increases in the cost of labor, materials, commodities, and construction, that it is almost impossible to fix fair values at a time like this with any degree of certainty. My feeling is that in con-

nection with any question of rate adjustment at the present time, *the one sure anchor, or the surest anchor is that of the actual cost of the property,* and that it would be very difficult indeed to fix a rate base at the present time that could be safely figured on to be satisfactory for the next two, three, or four years, when none of us can tell what is going to happen."

A review of Doctor Riggs' testimony reveals that the estimated reproduction value obtained is hyothetical, based as it is upon labor and material prices other than those prevailing in the Detroit area; upon the percentage of classes of property of a much smaller property. The only relation the estimate has to the Detroit Edison Company property is the book cost figures. It is the opinion of this Commission that such evidence is speculative and without probative value.

Estimated Fair Value

[9] The company introduced Exhibit 194 entitled "Rate Base Calculations." This evidence purports to set up a rate base predicated upon the combination of an arbitrary reproduction cost, after deducting "observed" depreciation and adding the company's claim for working capital and going value. This arbitrary reproduction cost was arrived at by taking its value at about 17 per cent above actual cost. In this exhibit such cost is characterized as fair value. Such a notion that fair value and reproduction cost are identical is, to say the least, without support. In connection with these reproduction cost and "fair value" estimates the Commission is asked to ignore the company's bona fide records of actual investment and to substitute in its place hypothetical calculations of little probative value.

In consideration of the various calculations of plant value herein described the Commission finds that it can accept the only real figure presented to it, that of actual book cost, as indicated before.

Book Cost

The company has maintained for a period of years a continuous inventory of its property. The adequacy of the system of accounts prescribed by this Commission should provide a book value closely related to the actual cost of the property. This is the only evidence of actual cost presented. The cost as reported has not been audited by the Commission and adoption in this case will have no binding effect on future action by the Commission, however, we feel we may safely assume that the company has not understated its actual cost.

The book cost of the electric plant as of December 31, 1943 was:

December 31, 1943	
Tangible Electric Plant	
Electric Plant in Service ..	$321,854,227.00
Construction Work in Progress	1,627,080.00
Total	$323,481,307.00
Intangible Electric Plant	
Organization	$926,410.45
Franchises and Consents ...	54,005.91
Acquisition Adjustments ...	6,268,623.09
Total	$7,249,039.45

[10–13] The actual expenditures for physical property do not embrace all of the costs related to the rate base. From the gross cost of plant in service must be deducted the accrued depreciation. To the net plant cost so obtained must be added construction work in progress, material and supplies, working capital, and intangible property.

The sum of these various elements is the rate base or "fair value" upon which the company is entitled to earn a reasonable return.

Depreciation

[14–16] The definition of depreciation in this Commission's Uniform System of Accounts for Electric Utilities is as follows:

" 'Depreciation,' as applied to depreciable electric plant, means the loss in service value not restored by current maintenance, incurred in connection with the consumption or prospective retirement of electric plant in the course of service from causes which are known to be in current operation and against which the utility is not protected by insurance. Among the causes to be given consideration are wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand and requirements of public authorities." See Michigan Administrative Code, 1944, p. 847.

As stated above, in the determination of the rate base, the actual accrued depreciation in the properties must be deducted. In the determination of the reasonable return, the annual depreciation must be allowed as an item of expense. Thus, depreciation has two interrelated aspects: *accrued depreciation* and *depreciation expense*. Both aspects must be harmonized; the principles that govern the estimating of accrued depreciation also govern the estimating of depreciation expense.

As an element of expense the loss of service value is charged periodically throughout the life of the property. The proper basis of these charges is the apportionment of the service value over the service life of the property. To avoid injustice to the utility or to the ratepayer, the accrued depreciation must be correlated with annual charges for depreciation. Since annual depreciation measures the diminution in service life in one year, accrued depreciation is the total diminished service life to the date of the inquiry.

The accumulated net annual charges for depreciation of property in service is the depreciation reserve. The reserve should be approximately equal to the actual accrued depreciation of the property at the time of the inquiry.

When the Detroit Edison Company was building up its reserve, it claimed the annual credits as an operating expense, which were charged to its customers. Consistent treatment would dictate that the net sum of these annual credits be controlling in the determination of the proper amount for accrued depreciation.

Norton, the company's expert witness on depreciation testified that the average service life of the company's property was thirty-three to thirty-four years, and that as of December 31, 1943, the average age of the property in service was thirteen years. Upon that basis, the depreciation reserve requirement is 38.24 per cent of the book value of the depreciable plant in service, or $131,213,000. The company's actual reserve is $64.710,000, and the deficiency is $66,503,000, as shown by Sullivan's Exhibit No. 183.

The Detroit Edison Company, by its witness Landrigan, has contended that only 10 per cent should be deducted from the depreciable property for depreciation, basing the contention upon Norton's testimony that the "percentage condition" of the property as of December 31, 1941, was 90 per

cent. Norton's physical inspection of the property for the purpose of this estimate was admittedly superficial, only 2 turbor-generators of a total of 26 were inspected, and only 12 of 40 boilers were examined. He admitted that the "percentage condition" estimate was made only on the basis of observable deterioration and did not include the elements of obsolescence, inadequacy, requirements of authorities, or contingent casualties.

The lack of probative value of the testimony relating to "per cent condition" is obvious when it is considered that on the basis of this testimony the property depreciated only 0.6 per cent or $1,800,000 during the year 1943, but the company claims approximately $10,000,000 as expense for depreciation for the same period. If the "per cent condition" of the property is correct for its actual depreciation, then clearly the company has been charging in excess of a reasonable amount as depreciation expense, and future allowances should be reduced accordingly.

It is quite apparent that the company's reserve is inadequate and that the current annual charge is excessive. However, for the purposes of this order, and until a detailed analysis can be made, the depreciation reserve will be taken as the best representation available of the accrued depreciation and the current annual charge will be adopted for purposes of computing income.

Working Capital

[17] Working capital has been defined by some authorities as the amount of capital necessary to cover the gap between cash expenditures in production and delivery of service—and the collection of revenues from the sale of service.

Such a definition allows a rather arbitrary determination to be made of this particular element. Usually a rough approximation of differences between current assets and current liabilities is made, with the criterion of test dependent upon the operating expenses for a specific numbers of days, usually forty-five days, to which is added materials and supplies sufficient to carry production for six weeks.

Such determinations are made to estimate the amount of funds required; the amount arrived at does not necessarily indicate the amount actually supplied by the investors. A differential may exist since under present-day business practices there is a considerable time lag between collection of bills and payment of taxes. The net cash and other liquid current assets on hand at any time results from the greater lag in payment of expenses and taxes over the lag in collection of revenues. At times there are considerable sums, which, even though earmarked, will not be paid in taxes for months. The existence of such sums would allow for a reduction, and in some cases the elimination, of the working capital item as included in the rate base.

The amount claimed by the company for working capital is excessive and in view of the large amounts of cash and temporary cash investments held by the company, we find that the maximum necessary working capital at this time is $12,000,000.

Rate Base Determination

After consideration of all of the elements of fair value introduced in this case we determine the rate base to be:

Electric Plant in Service—12/31/43	$330,730,000
Est. ½ year Additions to Plant	800,000
	$331,530,000
Less Estimated Depreciation	69,531,000
	$261,999,000
Working Capital	12,000,000
Rate Base	$273,999,000

Rate of Return

[18–21] The general rule with respect to what a public utility requires by the way of an annual rate of return has been stated in the leading case of Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 US 679, 692, 67 L ed 1176, PUR1923D 11, 43 S Ct 675.

The cost of money is an important factor in the determination of the reasonable rate of return. It is susceptible to objective analysis of factual data readily available. The cost of money has two concepts: the historical cost and the current cost.

Exhibit 166 offered by Witness William C. Gilman, on behalf of the company, shows that the weighted average historical cost of capital of Detroit Edison Company in the money market has been 6.14 per cent. No similar evidence has been presented in this case of the historical cost of capital to other enterprises to be used as a standard to test the reasonableness of the costs incurred by Detroit Edison Company.

The Edison Company has three issues of bonds outstanding:

$49,000,000.00, 4s, series F, due 1965
$35,000,000.00, 3½s, series G, due 1969
$50,000,000.00, 3s, series H, due 1970

totaling $134,000,000 with an average interest rate, based on par plus premium, less cost of financing, of 3.78 per cent. The only issue currently selling below call price is the series H, 3s, due in 1970, which as of January 11, 1945, was selling at 106½, yielding 2.64 per cent to maturity. Under the provisions of the Excess Profits Tax law, call premiums and double interest are deductible so that the net cost to the company of the cost of refunding is only 14½ per cent. Under the present market conditions it is very apparent that the 3½s and 4s could be refunded at a total cost to maturity of substantially less than 3 per cent. Other large utilities, notably Pacific Gas and Electric, Philadelphia Electric, and Commonwealth Edison have done so in recent months. If the total cost of debt money was 3 per cent, as it would be after refinancing, then a 4.71 per cent return on the investment in outstanding stocks and bonds in the total of $262,000,000 would provide a return of 6.36 per cent on the common stock. Under present conditions debt money may be had for less than 3 per cent, and to the extent that the company's historic cost of debt money exceeds 3 per cent, its use in determining reasonable revenue requirements is not justified.

The current cost of money is the cost which would be incurred by the utility if it were to secure its entire capital requirements under current market conditions. The cost of money, including the cost of financing, represented by securities issued at a date close to the time of the investigation, is an indication of the current cost of capital. Proponents of the current cost of money concept urge that the historic cost of money is not controlling, but that it is present-day

conditions as reflected by the changes which take place in the open, competitive money market that should be given the greatest weight.

Exhibit 163, offered for the company by Witness Gilman, shows that the current yield to maturity on seven high grade public utility bonds ranges from 2.55 per cent to 2.92 per cent, the median yield being 2.67 per cent. (Excluding from this exhibit the four issues selling above call prices—a reasonable exclusion—does not alter the median yield of 2.67 per cent.)

The weighted average cost of all new bonds issued and sold in the United States during 1944 by electric and gas utilities, was 3.02 per cent. (*"Security Issues of Electric and Gas Utilities, 1935–1945,"* Report of Public Utilities Division of the Securities and Exchange Commission.)

It has been recently stated that: "Public utilities are able to refinance their bonds at current levels with a substantial reduction in interest costs . . . it is apparent from a review of the situation that public utilities in general are able to obtain money at lower costs than those that prevailed in the past, and it would appear that the present cost of money is the lowest in history . . . As of June 30, 1944, the average yield was 2.96 per cent and during August, 1944, a selected list of nine AAA utility bonds sold in the security markets at yields varying from 2.55 per cent to 2.65 per cent as against yields of 2.56 per cent to 2.68 per cent for similar maturities of United States government bonds." (1944 Report of the Committee on Corporate Finance—National Association of Railroad and Utility Commissioners.) The Pacific Gas and Electric Company, a very large utility with approximately $300,000,000 of funded debt, issued and sold to underwriters during 1945 $80,000,000 of series M, 3 per cent, mortgage bonds, due in 1979, at a net cost to maturity of 2.66 per cent. There can be no doubt that Detroit Edison Company can currently obtain debt capital at similar cost.

In consideration of all the evidence, we find 2.67 per cent, as shown by Exhibit No. 163, the current cost of debt capital.

With respect to the current cost of equity money, Gilman's Exhibit 164 shows the median earnings-price ratio of seven high grade public utility common stocks, based on 1943 earnings and 1943 average monthly prices, to be 7.1 per cent. Exhibit No. 165, offered by the same witness, shows that the median dividends-price ratio of seven high grade public utility common stocks, based upon 1943 dividends and 1943 average monthly prices, was 6.4 per cent.

Giving equal weight to Gilman's evidence of earnings-price ratio and dividends-price ratio for common stocks, and apportioning the investment equally between stocks and bonds, we find the current cost of capital to be not more than 4.71 per cent, as shown by the following table:

The Detroit Edison Company
Cost of Raising Capital under Present Conditions

Security	Amount	Rate	Annual Cost
Bonds	50%	2.67%	1.34%
Common Stocks	50%	6.75%	3.37%
Over-all Cost of Capital			4.71%

This is a determination of the minimum rate of return. It is based upon factual, objective data furnished by the company of actual recent transactions in the open, competitive money market. This data consists of the investor's appraisal of the elements of risk, stability of income, current conditions, future prospects, and all other elements affecting the return requirements of capital invested in high grade public utility securities. It is considered as controlling as against the historical cost of capital heretofore discussed.

Operating Expenses and Taxes

To test the adequacy of present rates, a determination must be made of the revenues and total expenses during a particular period. If the analysis reveals that certain expense items are improper or have been improperly charged, then such changes should be made to reflect proper treatment.

[22] Certain expense items, including excess profits taxes, tax savings, and depreciation expense have been previously discussed. The only other expenses which have been questioned in this case are those associated with employees' retirement pensions. The Commission in its order of August 4, 1944, limited the amount of pension expense chargeable to revenues for rate-making purposes. A limit was placed upon pensions based on salaries in excess of $3,000 per year and expenses were not allowed for amortizing the unfunded actuarial liability for past service pensions at the time of adoption of the plan. We can find no reason for changing our views with respect to these matters, and the operating expense will be adjusted accordingly in our computation of the available rate reduction.

The Commission is advised that the city of Hamtramck intends to repeal its excise tax ordinance as has the city of Detroit and the other municipalities who enacted such ordinances. The amount of taxes which might be collected under this ordinance, in the event it is not repealed, is approximately $304,000. The net cost to the company of such a tax payment will be approximately $58,000. The difference between these amounts, or approximately $246,000, represents the resultant tax savings. The Commission in this opinion has been liberal in computing the amount of taxes to be paid by the company. This allowance is ample for the company to pay all the taxes to which it may be subject, including any tax it may have to pay to the city of Hamtramck.

Rate Reduction

Comparing the rate base for electric plant and the operating income and rate of return thereof found to be fair in this case, we find that a reduction of the Detroit Edison Company's revenue must be made.

The following computation illustrates the method pursued and the rate reduction to be made:

Electric Revenues (Est.) 1944 ..	$91,000,000
Less: Reduction	(10,450,000)
Estimated Total Revenue	$80,550,000
Electric Operating Expense	$43,770,000
Less: Pension Cost Adjustments	(663,000)
Depreciation Expense	9,645,000
Taxes (Domestic)	7,614,000
Federal Income Taxes	
Normal and Surtax	3,525,000
Excess Profits Tax	2,625,000
Total Expenses	$66,516,000
Estimated Revenue	$80,550,000
Total Estimated Expense	(66,516,000)
Net Return to Company from Electric Plant	$14,034,000
Per cent of Return to Rate Base	5.12%
Interest on Bonded Debt (Related to Electric Plant on 94.5% Basis)	$4,447,000
6% Dividends on Common Stock (Related to Electric Plant on 94.5% Basis)	$7,214,000
Remaining after Interest and Dividends	$2,373,000
Less: Provision for Accelerated Depreciation	(510,000)
Less: Disallowed Pension Costs	(663,000)
Available for Surplus from Electric Plant Earnings	$1,200,000

Conclusion

The complete analysis of all pertinent factors relating to rates and charges for electric service charged by the Detroit Edison Company impels us to the conclusion that they are presently unreasonable. Therefore, we again determine that the just and reasonable rates to be hereafter observed by order of this Commission shall reflect a reduction of at least $10,450,000. The Commission feels that a reduction of this amount is conservative and that generous allowances have been made throughout.

[23] For the year 1944 by the use of war necessity certificates the company avoided $2,028,000 of Federal income taxes. Of this amount it proposed to credit a postwar reserve account with $1,518,000 and to charge a like amount to operating expenses. Also it proposed to credit the remainder of the $2,028,000 or $510,000, to depreciation reserve as accelerated depreciation with a contra-charge to operating expenses. We are of the opinion that the sum of $510,000 credited as accelerated depreciation is properly a deduction from income. As a deduction from income the company may continue to credit the depreciation reserve with any part of, or all of the sum of $510,000.

The reduction of $10,450,000 in revenues allows the company sufficient earnings after interest and dividends to provide $510,000 for accelerated depreciation and allow $663,000 for appropriation from earnings to maintain the pension fund. After such deductions, there is still available for surplus from electric plant earnings $1,200,000.

Before concluding it is to be noted that acceptance by us for purposes of disposing of this matter, and that purpose only, the book value of the company's property, its depreciation reserve and its depreciation expense will not foreclose us from subsequently exercising our judgment as to how these matters shall be ultimately treated.

An appropriate order embodying these findings of fact will be entered in accordance with this opinion.

BARKELL, Commissioner, concurs: I believe that the order of August 4, 1944, should be affirmed.

ORDER

The Commission having on this date made and entered its opinion and findings in this matter, which are

hereby incorporated by reference and made a part hereof,

It is *ordered:*

That the Detroit Edison Company shall reduce its gross revenues for the year 1944 $10,450,000 by refunding said sum (less costs of distribution) to all its customers on a uniform basis. The company shall forthwith submit to the Commission a plan for the distribution of said amount.

The Commission has information which indicates that for the year 1945 the company's revenue may decrease. To provide against such a contingency the Commission will afford the company an opportunity as hereinafter set forth, to have the amount of the 1945 reduction reviewed at the time when eight months of actual results of 1945 are known.

In these proceedings the Detroit Edison Company has stated that it waives any question of the Commission's power to order a discount if the order is in other respects just, reasonable, and lawful, accordingly,

It is *further ordered,*

That the Detroit Edison Company during the year 1945 shall credit monthly to a special fund 1/12 of $10,450,000 and charge the same amounts monthly to its revenues. This fund shall be held available for the purpose of refunds to its customers. On or about October 1, 1945, the Commission will set a time and place for a hearing at which time and place the company will be afforded an opportunity to show cause, if any there be, in light of its then actual and estimated 1945 experience, why this provision of this order should be modified or amended. At the conclusion of this hearing, if the facts so warrant, an amendatory order will be entered.

This provision is intended for the benefit of the company, and the company shall notify the Commission of its election within fifteen days from the service of this order.

If the company is of the opinion that the above provision is not to its benefit, in lieu of the proposed reservation monthly of 1/12 of the ordered reduction, it shall forthwith submit for approval and filing proposed schedules of rates to be applied which will produce $10,450,000 annual revenue reduction during 1945, which will apply until the further order of the Commission. If the Detroit Edison Company shall fail to file a schedule of rates within fifteen days, the Commission will prescribe a schedule of rates affecting the reduction ordered.

It is *further ordered,*

1. That the Detroit Edison Company shall forthwith cease and desist from the charging as an operating expense

(a) Any portion of its "tax savings,"

(b) Any provision for "postwar adjustments,"

(c) Any provision for "accelerated depreciation,"

(d) Any provision for pension costs for:

(1) Past service actuarial liability,

(2) Employees' salaries in excess of $3,000 per year.

2. That the Detroit Edison Company shall charge to Income or Surplus, its contribution for past service cost of pensions and costs for pensions based on employees' salaries in excess of $3,000 per year.

3. Jurisdiction is retained of the

matters herein contained and the Commission reserves the right to issue such further order or orders herein as the circumstances may require.

NEW YORK PUBLIC SERVICE COMMISSION

Re Kings County Lighting Company

Case 11929
May 22, 1945

PETITION *for authority to issue first mortgage bonds for refunding purposes; denied.*

Security issues, § 106 — Sale price of bonds.

1. A public utility company proposing to issue bonds has a duty, in the interests of its security holders and particularly in the interest of preferred stockholders whose dividends are in arrears, to obtain the best price; and it is the duty of the Commission to see that the best price is obtained, p. 29.

Security issues, § 112 — Competitive bidding.

2. A subsidiary of a registered holding company, proposing to issue refunding bonds, should invite bids and thus determine what is a fair and reasonable price and interest rate for the securities offered instead of completing a pending sale under private agreement, notwithstanding the expense and delay necessary for filing with the Securities and Exchange Commission if competitive bidding is followed, in view of the Commission's experience of better terms under competitive bidding, p. 29.

APPEARANCES: Philip Halpern, Counsel (by Frank C. Bowers, Assistant Counsel), for the Public Service Commission; Charles G. Blakeslee, New York city, General Counsel, Kings County Lighting Company; Elmer B. Sanford, Mineola, Long Island, General Attorney, Kings County Lighting Company; Ignatius M. Wilkinson, Corporation Counsel (by Harry Hertzoff, Assistant Corporation Counsel), New York city, for the city of New York.

MALTBIE, Chairman: By petition filed with this Commission on April 9, 1945, the Kings County Lighting Company applied under § 69 of the Public Service Law for authority:

"(1) To issue and sell $4,200,000 principal amount of its first mortgage bonds 3 9/10%, series of 1975, due June 1, 1975, to be dated as of June 1, 1945, under an Indenture of Mortgage and Deed of Trust to be dated as of June 1, 1945, under which City Bank Farmers Trust Company, of New York city, will be trustee; and to sell said bonds for not less than par and accrued interest to date of delivery, to realize net proceeds of at least ..	$4,200,000.00
"(2) To pay and/or refund, by redemption on July 1, 1954 [sic],* the principal amount of petitioner's first refunding mortgage gold bonds, due July 1, 1954, amounting to ..... (of which $2,389,000 principal amount thereof bear interest at the rate of 5% per annum and $1,822,000 principal amount thereof bear interest at the rate of 6½% per annum) plus redemption premium of 5%, amounting to	4,211,000.00 210,550.00
Total	$4,421,550.00
"Leaving an amount unprovided for of ..... (which will be provided from other funds in the company's treasury)."	221,550.00

* Date corrected in record to 1945.

Kings County Lighting Company was incorporated in 1904 and in the same year merged the Kings County Gas and Illuminating Company. Effective voting control of this company has been held by Long Island Lighting Company since 1925 through ownership of almost all the outstanding common stock. The Kings Company's early history was reviewed in the opinion in Mayhew v. Kings County Lighting Co. 2 PSCR (1st Dist NY) 659, adopted by the Commission on October 20, 1911. The finances of the company were discussed in a memorandum adopted by the Commission on October 19, 1939, in Case 9983.

The bonds to be redeemed were issued by the company at various times and in various amounts as follows:

Year	Amount	Rate
1904–8	$1,603,000	5%
1909	200,000	5%
1912	625,000	5%
1922	675,000	6½%
1922	1,147,000	6½%
	$4,250,000	

Of the total issued, $39,000 principal amount of 5 per cent bonds have been reacquired by the company, leaving $2,389,000 of 5 per cent and $1,822,000 of 6½ per cent bonds outstanding on February 28, 1945. The company proposes to deliver to the trustee for cancellation the $39,000 of 5 per cent bonds now held in the treasury.

The mortgage securing the new issue is to be unlimited as to principal amount and will constitute a first lien upon all of the property and franchises of the company now owned or hereafter acquired except certain assets such as cash, materials and supplies, automobiles, nonoperating property, etc.

The indenture provides for a sinking-fund payment of $63,000 per year payable on April 1st of each year, the first instalment being due April 1, 1946. This sinking fund is to be used to purchase bonds at not more than the principal amount thereof. Bonds held in the sinking fund are not to be retired and interest thereon will be paid into the sinking fund. The required deposit of $63,000 per year is to continue as long as the bonds are outstanding or until redeemed.

As the bonds purchased are to be kept alive in the sinking fund, the fund will be increased annually after the

first payment not only to the extent of $63,000 per year but also of interest on the bonds held in the sinking fund. Assuming bonds are promptly purchased for the sinking fund with the available interest and the lump sum payment, there will be a steadily increasing amount. The first payment will reduce the bonds outstanding in the hands of the public by $63,000. At the end of the next year, the amount available for the purchase of bonds for the sinking fund would be $64,953. If the sinking fund is handled efficiently and the funds promptly reinvested in the proposed issue, at the maturity of the bonds in 1975, there would be in the sinking fund approximately $2,800,000 or $2,900,000.

How the annual sinking-fund payment was determined is not shown in the record. It is 1½ per cent of the face value of the bonds, but how the percentage was determined is shrouded in mystery. There is nothing in the record that it is more than an arbitrary figure. However, the results are very substantial and the provision is very much in the interest of the bondholders. Of course, ultimately the preferred stockholders gain, as the diminution outstanding against the property improves the equity of the preferred stockholders, but the setting aside of $63,000 annually operates to reduce the amount annually available for payment of any dividends.

The indenture provides for a minimum charge against operating expenses for depreciation equal to 1½ per cent of the depreciable property, said to be not less than $10,000,000 as of December 31, 1944, plus net additions of depreciable property. In the 1937 rate investigation (1 Ann Rep NY PSC 374, 464), the Commission allowed about $230,000 for annual depreciation expense. The amount charged by the company in 1944 was $143,007.48 (annual report). As the property had increased since the rate investigation, the proper depreciation allowance for any future year would be in excess of $230,000 and the deficiency of the company's allowance is probably in the neighborhood of $100,000 annually.

How the indenture depreciation rate of 1½ per cent was determined is not shown in the testimony. It is apparently an arbitrary figure determined without any relation to the useful life of the property used in the service of the public; but as it is a minimum requirement, the company is free to set aside a larger amount.

The company asks authority to issue $4,200,000 principal amount of 3 1/10 per cent bonds, series of 1975, to be issued and sold under this new mortgage. A purchase agreement has been entered into with the John Hancock Mutual Life Insurance Company which provides for the sale of the entire issue as a private offering, the bonds to be sold at par plus accrued interest to the date of delivery, which is to be not later than June 26, 1945.

The bonds may be called for redemption on thirty days' notice at the following prices:

To	and	including	June	1,	1950	at	103
"	"	"	"	1,	1955	"	102½
"	"	"	"	1,	1960	"	102
"	"	"	"	1,	1965	"	101½
"	"	"	"	1,	1970	"	101
"	"	"	"	1,	1971	"	100¾
"	"	"	"	1,	1972	"	100½
"	"	"	"	1,	1973	"	100¼
"	"	"	"	1,	1975	"	100

The company submitted an esti-

mate of the cost of issuing the new bonds of $43,349, not including any expenses of this Commission or of the Securities and Exchange Commission. The estimate consists of the following items:

1. Federal original issue tax	$4,620
2. N. Y. State Recording Tax	21,000
3. P. S. C. Filing Fee	820
4. Trustees' fees	2,100
5. Services of counsel for trustee	1,500
6. Services and disbursements of trustee in re redemption of outstanding bonds	2,709
7. Services of counsel in re foregoing	300
8. Legal Expenses—counsel for purchaser	5,100
9. Printing of purchase contracts and Indentures of mortgage	3,000
10. Redating title policies, etc.	1,400
11. Printing of bonds	500
12. Miscellaneous	300
Total	$43,349

Items 6 and 7 are clearly expenses incurred in connection with the redemption of the old bonds and must be charged to surplus. Therefore, the above total should be reduced to $40,340.

The company proposes to charge to surplus $79,388.71, representing the balance of unamortized debt discount and expense applicable to the old bonds. There will be a further charge against surplus of $210,550 representing a premium of 5 per cent which it must pay as call premiums. Thus, the total cost to the company of refinancing amounts to over $333,000 of which nearly $293,000 must be written off immediately.

The company also submitted an estimate of the probable savings which it expects to realize as a result of the proposed refinancing. The Federal income tax on the additional income was figured at 40 per cent. The company's computation is shown in Table I.

TABLE I

Statement showing annual savings resulting by the sale of the proposed issue of $4,200,000 principal amount of first mortgage 3 1/10% bonds

Present bond interest requirements:		
$2,389,000—5% first mortgage refunding bonds	$119,450.00	
1,822,000—6½% first mortgage refunding bonds	118,430.00	
	$237,880.00	
Proposed bond interest requirements:		
$4,200,000 at 3 1/10%	130,200.00	
Savings in Interest Payments		$107,680.00
Plus the elimination of expenses now being incurred on present bonds outstanding		
Taxes assumed on interest		1,478.70
Amortization of debt discount and expense		6,778.52
Total		$115,937.22
Less estimated expenses in connection with proposed bond issue		
Estimated cost of selling proposed issue ($43,349.00 at 30 years)	1,444.97	
Federal income tax on additional taxable income	45,465.71	46,910.68
Estimated annual savings		$69,026.54

The company's capital stock now outstanding consists of the following:

	No. of Shares	Stated or Par Value
Common no par	50,000	$2,000,000
7% Series B preferred $100 par	17,907	1,790,700
6% Series C preferred $100 par	1,129	112,900
5% Series D preferred $100 par	25,000	2,500,000
Total		$6,403,600

The company's petition shows that on February 28, 1945, dividends on preferred stock were in arrears in the amount of $415,682.18 allocated to the various issues as follows:

7% Series B preferred	$202,647.55
6% Series C preferred	10,951.30
5% Series D preferred	202,083.33
Total	$415,682.18

The company's dividend history for the years 1940 to 1944 shows that during this 5-year period no dividends whatsoever were paid to the common stockholders. Preferred dividend requirements were met in the years 1940 and 1941, but since then dividends on preferred stock have fallen more and more in arrears (petition).

The company's annual report for the year 1944 shows that between April 28 and May 26, 1944, 257 shares of the 7 per cent series B preferred stock were reacquired. The total cost of these shares was $15,786.40. The par value of the shares was $25,700. In connection with the cancellation of these shares, the company wrote off $1,614.22 of unamortized debt discount and expense applicable thereto. The net profit on this transaction therefore was $8,299.38, which was set up as unearned surplus by the company.

Balance Sheet

Table II below shows the company's balance sheet as of March 31, 1945. The first column shows the book figures before adjustment. Next are shown the net adjustments to the accounts resulting from (1) the Commission's order in Case 10358, approved April 12, 1945, 58 PUR(NS) 129, corrected to reflect company adjustments made subsequent to the date as of which the Commission's findings were set up (December 31, 1943); and (2) changes in the accounts brought about by the proposed refunding. The last column is a pro forma balance sheet as of March 31, 1945, giving effect to the above adjustments, a schedule of which is attached to Table II.

TABLE II

Balance Sheet as of March 31, 1945, per books, adjustments, and pro forma balance after refunding

Assets and Other Debits	Per Books	Adjustments Dr.	Adjustments Cr.	Pro Forma Balance
Gas Plant in Service	$11,868,022		$869,585(1)	$10,998,437
Construction Work in Progress	12,945			12,945
Gas Plant Held for Future Use	2,154			2,154
Gas Plant Acquisition Adjustments	2,806,975		2,806,975(2)	.....
Total Utility Plant	$14,690,096		$3,676,560	$11,013,536
Other Physical Property	$81,483			81,483
Investments in Associated Cos.	867,000			867,000
Other Investments	90			90
Miscellaneous Special Funds	19,689			19,689
Total Investment Fund Accounts	$968,262			$968,262
Cash	$652,422		$264,899(3)	$387,523
Special Deposits	7,572			7,572
Working Funds	9,505			9,505
Accounts Receivable	256,998			256,998
Receivables from Associated Companies	973			973
Rents Receivable	495			495
Accrued Utility Revenues	123,889			123,889
Materials and Supplies	260,553			260,553
Prepayments	78,458			78,458
Total Current and Accrued Assets	$1,390,865		$264,899	$1,125,966
Unamortized Debt Discount and Expense	79,389		$79,389(4)	.....
Preliminary Survey and Investigation Charges	1,179			1,179
Clearing Accounts	(R) 1,337			(R) 1,337
Retirement Work in Progress	1,176			1,176
Other Deferred Debits	2,534	43,349(12)		45,883
Total Deferred Debits	$82,941	$43,349	$79,389	$46,901
Capital Stock Expense	$245,066			$245,066
Reacquired Long-term Debt	$39,000		$39,000(6)	.....
Total Assets and Other Debits	$17,416,230	$43,349	$4,059,848	$13,399,731

(R) Indicates red figure.

TABLE II—*Continued*

Balance Sheet as of March 31, 1945, per books, adjustments, and pro forma balance after refunding

Liabilities and Other Credits	Per Books	Adjustments Dr.	Adjustments Cr.	Pro Forma Balance
Common Capital Stock	$2,000,000			$2,000,000
Preferred Capital Stock	4,403,600			4,403,600
Premiums and Assessments on Capital Stock	11,290			11,290
Total Capital Stock	$6,414,890			6,414,890
Bonds	$4,250,000	4,250,000(11)	$4,200,000(5)	$4,200,000
Accounts Payable	$102,657			$102,657
Payables to Associated Companies	7,749			7,749
Dividends Declared	299			299
Matured Interest	6,273			6,273
Customers' Deposits	717,448			717,448
Taxes Accrued	136,095	118,139(10)		17,956
Interest Accrued	100,529			100,529
Other Current and Accrued Liabilities	57,269			57,269
Total Current and Accrued Liabilities	$1,128,319	$118,139		$1,010,180
Customers' Advances for Construction	$6			$6
Other Deferred Credits	107,613			107,613
Total Deferred Credits	$107,619			$107,619
Reserve for Depreciation of Gas Plant	$1,547,602	$172,997(9)		$1,374,605
Reserve for Uncollectible Accounts	18,184			18,184
Insurance Reserve	51,152			51,152
Injuries and Damages Reserve	31,302			31,302
Other Reserves	188,459			188,459
Total Reserves	$1,836,699	$172,997		$1,663,702
Unearned Surplus	$328,439	$320,140(8)		8,299
Earned Surplus	3,350,264	3,355,223(7)		(R) 4,959
Total Surplus	$3,678,703	$3,675,363		$3,340
Total Liabilities and Other Credits	$17,416,230	$8,216,499	$4,200,000	$13,399,731

(R) Indicates deficit.

NOTE—The company exhibits do not show the arrearages in preferred stock dividends—a serious omission.

Balance Sheet Adjustments

(1) P. S. C. adjustment, C. 10358	$868,595	
Add back company adjustment per Ex. 11	990	
Net adjustment—Credit Gas Plant in Service		$869,585
(2) P. S. C. adjustment, C 10358	2,807,095	
Deduct company adjustment per Ex. 11	120	
Net adjustment—Credit Gas Plant Acquisition Adjustments		2,806,975
(3) Adjustment reflecting effect of refunding on Cash account		
Payment of premium	210,550	
Expenses of issuing new bonds	43,349	
Redemption of old bonds for cash	11,000	
Total adjustment—credit Cash		264,899
(4) Credit Unamortized Debit Discount and Expense—old issue		79,389
(5) Credit Bonds—new issue		4,200,000
(6) Credit Reacquired Long-term Debt		39,000
Total Credit Adjustments		$8,259,848
(7) P. S. C. adjustment, C. 10358—Debit Surplus	$868,595	
Add back company adjustment	870	
Net adjustment	$869,465	
P. S. C. adjustment, C. 10358	2,313,958	
Adjustment to reflect write-off of premium and debit discount and expense, old issue	289,939	
Deduct adjustment to reflect savings in taxes through refunding	(118,139)	
Net adjustment—debit Surplus		3,355,223
(8) P. S. C. adjustment, C. 10358—debit unearned surplus		320,140
(9) P. S. C. adjustment, C. 10358—debit Reserve for Depreciation of Gas Plant		172,997
(10) Adjustment to reflect tax savings—debit Taxes Accrued		118,139
(11) Adjustment to reflect write-off of old issue—debit Bonds		4,250,000
(12) Adjustment to set up estimated cost of issuing new bonds—debit Other Deferred Debits		43,349
Total Debit Adjustments		$8,259,848

Using the figures shown in the last column of Table II for the purpose of this discussion, we may compare the original cost of utility plant less proper depreciation with the face value of the bonds which would be outstanding were the petition to be granted.

The original cost of all utility plant as of March 31, 1945, is $11,013,536. The depreciation reserve applicable to this property is $1,374,605, but in the memorandum in Case 10358, approved by the Commission on April 12, 1945, 58 PUR(NS) 129, which was the basis of the order adopted upon the same date requiring the company to adjust its accounts, the depreciation reserve was said to be deficient by about $2,000,000 as of December 31, 1943. Upon that date, the book reserve was, in round figures, $1,190,000. Between December 31, 1943, and March 31, 1945 (one year and three months), the reserve had increased about $185,000. As the company has for many years failed to

credit to the reserve an adequate amount, the deficiency as of March 31, 1945 is appreciably more than $2,000,000. If we assume that the reserve should be about $3,500,000, the original cost of utility plant less the depreciation reserve would be about $7,500,000 and the amount represented in outstanding bonds would be about 56 per cent.

Passing to an analysis of the company's income account as shown in its reports to the Commission for the three years ending December 31, 1944, in order to compare the income available for interest and dividends with the charges made, we start with Table III.

TABLE III

Comparative Income Statement per Annual Reports

	1942	1943	1944
Operating Revenues	$3,191,002.76	$3,280,962.71	$3,330,026.46
Operation and Maintenance	2,047,670.36	2,153,713.36	2,202,927.80
Depreciation	142,964.04	143,007.48	143,007.48
Operating Taxes	400,195.22	409,441.36	411,963.71
Total Operating Revenue Deductions	$2,590,829.62	$2,706,162.20	$2,757,898.99
Net Operating Revenues	600,173.14	574,800.51	572,127.47
Other Income (net)	2,334.79	821.60	5,891.70
Gross Income	602,507.93	575,622.11	578,019.17
Interest and Amortization	244,041.09	244,318.34	244,608.07
Taxes Assumed on Interest	1,352.45	1,376.05	1,448.90
Other Interest Charges	29,857.10	29,320.32	28,727.88
Miscellaneous Income Deductions	782.42	2,014.82	2,686.89
Income Taxes	80,653.76	66,273.42	88,750.01
Total Income Deductions	356,686.82	343,302.95	366,221.75
Net Income—Available for dividends	$245,821.11	$232,319.16	$211,797.42

The company also submitted an income account for the year ended March 31, 1945, which showed net income of $238,865 after the payment of interest, amortization and income taxes.

Regarding all of these income statements, one important fact is to be noted. In no year has the company actually charged to operating expenses and credited to the depreciation reserve an adequate amount. It has failed to credit to the reserve the amounts allowed for depreciation charges in the gas rates which the Commission has ordered from time to time. In other words, the company has diverted to surplus year after year an amount which ought to have been credited to the reserve. Thus, the surplus has been constantly overstated and operating expenses and depreciation reserve understated.

In the indenture there is the requirement that at least 1½ per cent of the depreciable property shall be credited to the reserve and charged as an operating expense and that in addition the company is required to set aside in a sinking fund $63,000 a year for the purpose of acquiring bonds and thereby decreasing the obligations

outstanding in the hands of the public. But even if we add $63,000 to $150,000 (1½ per cent), the amount is less than the Commission allowed in the last rate case for annual depreciation charges.

The net income for each of the three years given in Table III, and for the year ended March 31, 1945, is excessive by approximately $100,000 annually. Deducting this amount produces net incomes after payment of all reported charges and adequate depreciation of approximately—

$150,000 for 1942
135,000 for 1943
115,000 for 1944
140,000 for the year ended March 31, 1945.

As the annual dividend requirements on the preferred stock are $257,123, several facts are apparent. First, the company is not earning and has not earned in recent years, its preferred stock dividends in full even on the company's own figures. Secondly, if the company had provided an adequate depreciation reserve, it would have failed to earn its preferred stock dividends by over $100,000 in each year. Obviously, the common stock has no value whether one uses the balance sheet (with a proper depreciation reserve) or the earnings as a test.

However, if the petition is approved, the condition of the company from an income viewpoint would be considerably improved, as indicated by the following, rounded-off figures being used:

	1942	1943	1944	Year Ended March 31, 1945
Reported Gross Income—(Table III)	$602,500	$575,600	$578,000	$631,900
Less Additional Depreciation, say	100,000	100,000	100,000	100,000
	$502.500	$475,600	$478,000	$531,900
Interest and Amortization, about (New Issue)	$132,000	$1 2,000	$132,000	$132,000
Other Interest & Deductions, about	31,000	31,000	31,000	31,000
Income Tax (40%)	135,800	125,040	126,000	147,560
Total Deductions	$298,800	$288,040	$289,000	$310,560
Net Income	$203,700	$187,560	$189,000	$221,340

The net incomes just given are before the deduction of $63,000 annually to be placed in the sinking fund and if such sinking-fund payment were made in addition to provision for an adequate depreciation reserve, the amount available for preferred stock dividends would be reduced to the extent of such sinking-fund payment and would make the deficiency below requirements a very considerable amount.

It may be argued that to require that adequate provision be made for depreciation and also a sinking-fund payment of $63,000 annually is a duplication and that the sinking-fund payment should be credited against depreciation requirements, as the financial status of a company is increased whether a depreciation reserve be provided and the funds thereby obtained used to increase the company's assets or the funds obtained through the sinking fund be used to decrease the liabilities. There is considerable force to this argument but the company is proposing to refund its bonds before it adjusts its accounts as it should do, and the proposal must now be con-

sidered in the light of what the company has done and is proposing to do rather than in the light of a reconstructed balance sheet in accordance with proper accounting.

However, if one were to compare the earnings of the company after provision has been made for all proper charges, including additional depreciation and sinking fund as required by the indenture, it is obvious that the company's income before interest ($321,340 for year ended March 31, 1945) would be far in excess of interest and amortization requirements ($163,000). From this point of view the proposed refunding is justified.

In passing, it may be pointed out that the financial readjustments which the company should make include not only the refunding of its bonds but a revision of its preferred stock. As the Commission has stated over a long period of some thirty-five years, the common stock really represents no property or earnings. The preferred stockholders are entitled to all of the earnings between a fair rate of return on the one hand and proper operating costs (including depreciation, taxes, and other charges) and interest requirements on the other.

The par value of the preferred stock outstanding is $4.403,600—more than the face value of the bonds, a most unusual condition. The dividend rates vary from 5 to 7 per cent and average over 5.8 per cent. In the light of present financial conditions, it is clear that if a reasonable amount of new preferred stock were to be issued, it could be sold at par at a much lower dividend rate, the company would then have a more normal financial structure; and if the preferred stockholders were given common stock, they would control the company and ultimately obtain whatever earnings the company would be able to obtain under reasonable rates. The equity of this plan is emphasized by the fact that the dividends on the preferred stock are already in arrears to the extent of over $415,000. However, the company has submitted no such proposition and the Commission must act on the proposal as it has been submitted and on the record as made.

[1, 2] Under the provisions of statute, the Commission must find, before authorizing the issuance of any securities, that the proposed issue is necessary for the purposes specified. In reaching its decision, the Commission must consider all of the conditions and terms of the proposal, including the requirements of the mortgage. This brings us to a discussion of the interest rate proposed and whether it is as low a rate as could reasonably be obtained under all of the conditions surrounding the issue, the property back of the mortgage and the probable earnings of the company.

In recent years, and particularly in 1944 and 1945, the sale of securities through competitive bidding has grown by leaps and bounds, and companies generally have restored to this method in preference to private sale or agreement without any public offering. This Commission has rejected proposals for a private sale because it did not believe the companies had obtained as good terms as they could have secured; and in every instance where the petition has been denied and competitive bidding has been utilized, the company has obtained better terms, particularly in the way of lower interest rates and

higher prices, than were proposed in the rejected petition. Whether a private agreement made without any competitive bidding is the best that can be obtained is obviously a matter of opinion until bids have been received; but there is one great advantage of competitive bidding from the standpoint of the Commission and of company officials. We have had so much experience with competitive bidding and the benefits to the companies under our jurisdiction have been so great that there is no longer any question of the practicability of competitive bidding and that this means will obtain better terms than private sale. It may be that if conditions were to change and through some means real competition were to be eliminated, so that it did not represent a free expression of the financial world as to the proper price to be paid for an issue, "competitive bidding" would need to be abandoned. But there is no such condition at present and there seems to be no better way of determining what is the best a company can obtain for the securities it issues than by inviting bids from any source with full publicity and with ample time afforded to submit bids.

Company officials insist that they are unable to obtain better terms and that the offer to purchase the proposed bonds, bearing an interest rate of 3.1 per cent at par, is the best that can be secured and that competitive bidding will not produce a lower interest rate or a higher price. Of course, this is a matter of opinion and it is not supported by the experience of this Commission. If better prices can be obtained than those proposed, it is the duty of the company, in the interests of its security holders and particularly in the interest of the preferred stockholders whose dividends are in arrears, to obtain the best price; and it is the duty of the Commission to see that the best price is obtained.

It has been suggested that this is a small issue and that it is difficult to interest financial agencies in submitting bids for such a small issue. This assertion is not borne out by the facts. The size of an issue has not been determinative of the number of bids submitted as evidenced by the recent experience of the Georgia Railway and Power Company.

It has also been suggested that if competitive bidding is followed, the company must file with the Securities and Exchange Commission, that such filing is expensive and will result in delay, and that the lower interest rate obtained, if any, will not offset the additional expenses thus incurred. It may be true as asserted that such costs are in excess of the expenses of this Commission and that in the case of a small company and a small issue an effort should be made to simplify the procedure; but it is probable that in the present instance the costs of filing with the Securities and Exchange Commission for public sale would not exceed $10,000 or $15,000. A reduction of only $\frac{1}{10}$th of one per cent in the annual interest rate would produce an additional saving of $4,200, which with the resulting decrease in Federal income taxes would wipe out the SEC charges in two or three years and ultimately the gain to the company and to the preferred stockholders would be substantial.

Considering all factors, it is our opinion that the petition should be denied as not meeting the requirements

of statute and that the company should invite bids and thus determine what is a fair and reasonable price and interest rate for the securities offered.

While we do not insist that the company put its house in order before refunding its bonds, the interests of the preferred stockholders and fair dealing require that a complete financial reorganization should be undertaken. The company management has been derelict in not meeting the situation fairly and squarely many years ago. It has not given to the preferred stockholders the consideration to which they have been entitled.

SECURITIES AND EXCHANGE COMMISSION

Re Kings County Lighting Company

File No. 70-1074, Release No. 5837
May 31, 1945

DECLARATION *by subsidiary of holding company, pursuant to § 7 of the Holding Company Act, regarding the issue and sale of short-term promissory note; declaration permitted to become effective.*

Security issues, § 80 — Promissory note — Temporary financing — Bond redemption.

A subsidiary of a registered holding company which has been denied authority by a state Commission to issue refunding bonds without competitive bidding, thereby facing a situation wherein it cannot complete the sale of the bonds before the required date for making its redemption call for bonds outstanding, should be permitted to issue and sell a short-term promissory note, the proceeds of which will be used for immediate retirement of the outstanding bonds, and the note to be retired with the proceeds of long-term bonds to be issued shortly at competitive bidding, subject to reservation of jurisdiction over fees and expenses and all aspects of the issue and sale of the bonds.

APPEARANCES: Charles G. Blakeslee, Elmer B. Sanford, and Charles E. Elbert, for Kings County Lighting Company; Solomon Freedman, for the Public Utilities Division of the Commission.

By the COMMISSION: On April 27, 1945, Kings County Lighting Company ("Kings"), a subsidiary of Long Island Lighting Company, a registered holding company,[1] filed an application under § 6(b) of the Public Utility

[1] Long Island Lighting Company, which owns 97.74 per cent of the common stock (the only voting security) of Kings, registered as a holding company on April 23, 1945, pursuant to our order entered April 21, 1945, wherein we modified an exemption formerly granted Long Island Lighting Company from all the provisions of the act, on behalf of itself as a holding company and every subsidiary company thereof as such, so as to

Holding Company Act of 1935, 15 USCA § 79f(b), requesting an exemption from the provisions of § 6(a) of the act, and an exception from the competitive bidding requirements of Rule U-50 of the Rules and Regulations promulgated under the act, with respect to the issue and sale of $4,200,000 principal amount of its 3 1/10 per cent first mortgage bonds due 1975 to John Hancock Mutual Life Insurance Company ("John Hancock") at a cash price of $4,200,000. The proceeds from the proposed sale, together with treasury cash, were to be used to redeem and retire, as at July 1, 1945, the company's outstanding $4,211,000 principal amount of first refunding mortgage gold bonds due 1954.

The foregoing proposal required the approval of the Public Service Commission of the state of New York. On May 22, 1945, that Commission refused to permit the issue and sale of the bonds in the absence of competitive bidding.[2] The company thereupon, on May 24, 1945, amended its application before this Commission to provide for the issue and sale of its first mortgage bonds at competitive bidding. However, since the bonds outstanding at present are redeemable, on four weeks' notice, upon the semiannual interest payment dates of July 1st and January 1st, the redemption call must be made no later than June 2, 1945, if the bonds are to be redeemed on July 1, 1945. Otherwise, the bonds may not be redeemed until January 1, 1946. Since the company is desirous of issuing the redemption call on June 1, 1945, and it is impossible to prepare and file a registration statement and invite and receive bids for the sale of the bonds prior thereto, it proposes to obtain a short-term loan of $4,200,000 as interim financing and to repay such loan from the proceeds of the 30-year first mortgage bonds to be sold later at competitive bidding. For this purpose, the company will issue to John Hancock its promissory note in the principal amount of $4,200,000, to be dated June 26, 1945, to bear interest at 1½ per cent per annum, and to mature not later than November 30, 1945.[3] The proceeds of $4,200,000, together with treasury cash, will be used to redeem the outstanding bonds as of July 1, 1945. John Hancock has also agreed to extend, until November 30, 1945, the agreement of purchase of the first mortgage bonds of the company upon the same terms formerly agreed upon.

At the present time, the only matter which Kings has asked us to pass upon and which we need consider is whether the declaration under §§ 6a and 7 of the act, 15 USCA §§ 79f(a), 79g, regarding the short-term interim fin-

terminate such exemption in respect of the registration, issuance of securities, reorganization and other provisions of the act. Re Long Island Lighting Co. Holding Company Act Release No. 5746.

[2] Re Kings County Lighting Co. Case 11929, 59 PUR(NS) ante, p. 19. The memorandum of the New York Commission also pointed out that the company was in need of recapitalization. It stated, however, that the refinancing of the long-term debt could be effected before the company was recapitalized. In connection with the present proceeding, Kings has indicated that a plan of recapitalization under § 11(e) of the act, 15 USCA § 79k(e) will be filed shortly.

[3] The company may anticipate the maturity date, without penalty, upon ten days' notice. The loan agreement to be executed in connection with the issuance of the promissory note will provide that the company will not incur any mortgage indebtedness or other indebtedness for a term of more than one year unless it shall have paid the note in full with interest.

ancing should be permitted to become effective, and we shall reserve jurisdiction over all aspects of the issue and sale of the 3 1/16 per cent first mortgage bonds of the company due 1975.[4]

A public hearing as to the issue and sale of the short-term note was held after appropriate notice. Upon a consideration of the record, the Commission makes the following findings:

The Declarant

Kings, incorporated in 1904 under the laws of the state of New York, is a public utility company operating wholly within the state of New York. It is engaged in the manufacture of gas and in the sale and distribution thereof for light, heat or power in the county of Kings, state of New York.

At the present time, Kings owns the entire interest in Kings Appliance Corporation, a nonutility which is a New York corporation engaged in the business of selling gas appliances to Kings' consumers. Until recently, Kings owned the entire interest in Kings D. and R. Corporation, a New York corporation engaged in the business of acquiring and selling real property used in connection with the operations of its parent, Kings. On May 15, 1945, Kings D. and R. Corporation was dissolved and its assets, subject to its liabilities, were acquired by Kings.

Use of Proceeds

The proceeds of $4,200,000 to be derived from the sale of the short-term note, together with treasury cash of $221,550, will be used to redeem and retire, as of July 1, 1945, all of the outstanding long-term debt of Kings, amounting to $4,211,000 as follows:

TABLE I

First mortgage 5 % bonds due July 1, 1954		
Principal amount (net of $39,000 in treasury)	$2,389,000	
Call premium—5%	119,450	$2,508,450
First mortgage 6½% bonds due July 1, 1954		
Principal amount	$1,822,000	
Call premium—5%	91,100	1,913,100
Total call price		$4,421,550

Balance Sheet

Attached hereto as Exhibit A is a condensed corporate balance sheet of Kings, as at April 30, 1945, per books, and pro forma giving effect to the proposed issue and sale of its short-term note and the redemption of its presently outstanding bonds. [Exhibit A omitted.]

Plant and Property

The gas utility plant in the amount of $11,037,356, as indicated in Exhibit A, is stated at original cost pursuant to a recent order of the Public Service Commission of the state of New York.[5] In accordance with that order, Kings reduced its gas utility plant, as of December 31, 1943, by $3,675,690 by charges of $3,182,553 to earned surplus, $320,140 to unearned surplus, and $172,997 to reserve for depreciation.

[4] Since the redemption of the outstanding first refunding mortgage gold bonds is to be effected as provided in the indenture, this aspect of the proposed transaction is exempted by Rule U-42 (b) (2).

[5] In Re Kings County Lighting Co. (1945) Case 10358, 58 PUR(NS) 129. The $11,037,356 does not include any amounts applicable to the property recently acquired upon the dissolution of Kings D. and R. Corporation. As at April 30, 1945, the plant and property of Kings D. and R. Corporation was stated at $517,386, against which there was a reserve for depreciation in the amount of $170,816.

The reserve for depreciation, at April 30, 1945, in the amount of $1,386,707, represents 12.56 per cent of the gas utility plant of $11,037,356.

The net utility plant amounts to $9,650,649, and the amount of the promissory note proposed to be issued represents 43.52 per cent of such net plant.

Capitalization

There is set forth below in Table II the capitalization and surplus of Kings, as at April 30, 1945, on the following bases: (1) per books, (2) as adjusted to reflect the accumulated arrearages on the preferred stocks of the company, and (3) pro forma reflecting the further effect of the issuance of its short-term note and the redemption of its outstanding bonds.

TABLE II

	Per books		Per Books adjusted to reflect accumulated arrearages		Pro forma, reflecting issuance of short-term note, redemption of bonds, and accumulated arrearages	
	Amount	%	Amount	%	Amount	%
Long-term Debt						
1st mtge. 5's due 1954	$2,389,000	22.06	$2,389,000	22.06	$.....	.....
1st mtge. 6½'s due 1954	1,822,000	16.82	1,822,000	16.82	.....	.....
Total long -term debt	4,211,000	38.88	4,211,000	38.88	.....	.....
Promissory Note Payable, Due Nov. 30, 1945	.....	....	.....	....	4,200,000	39.48
Preferred Stock and Undeclared Dividend Arrearages						
7% Cum. Pfd.—$100 p. v.—17,907 shs.	1,790,700	16.53	1,790,700	16.53	1,790,700	16.83
6% Cum. Pfd.—$100 p. v.—1,129 shs.	112,900	1.04	112,900	1.04	112,900	1.06
5% Cum Pfd.—$100 p. v.—25,000 shs.	2,500,000	23.09	2,500,000	23.09	2,500,000	23.50
Paid-in premiums	11,290	.10	11,290	.10	11,290	.11
Total par value and paid-in premiums	4,414,890	40.76	4,414,890	40.76	4,414,890	41.50
Undeclared dividend arrearages						
7% Cum. Pfd.—$12.48¾ per sh.	.....	.....	223,539	2.06	223,539	2.10
6% Cum. Pfd.—$10.70 per sh.	.....	.....	12,080	.11	12,080	.11
5% Cum. Pfd.—$8.91¾ per sh.	.....	.....	222,917	2.06	222,917	2.10
Total undeclared arrearages	.....	.....	458,536	4.23	458,536	4.31
Total pfd. stock and undeclared arrearages	4,414,890	40.76	4,873,426	44.99	4,873,426	45.81
Total long-term debt, promissory note, and preferred stock plus arrearages	8,625,890	79.64	9,084,426	83.87	9,073,426	85.29

TABLE II—Continued

Common Stock and Surplus						
Common stock—50,000 shs., n. p. v.	2,000,000	18.48	2,000,000	18.48	2,000,000	18.81
Unearned surplus	8,299	.07	8,299	.07	8,299	.08
Earned surplus	195,702	1.81	195,702	1.81	14,240	.13
Less: Adjustment to reflect accumulated preferred dividend arrearages	.....	.....	(458,536)	(4.23)	(458,536)	(4.31)
Total common stock and surplus	2,204,001	20.36	1,745,465	16.13	1,564,003	14.71
Total capitalization and surplus	$10,829,891	100.00	$10,829,891	100.00	$10,637,429	100.00

( ) Denotes red figure.

As indicated above, the proposed short-term borrowing represents 39.48 per cent of the total capitalization and surplus on a pro forma basis.

It will be noted that the earned surplus decreases from $195,702 to $14,240. The pro forma reduction of $181,462 is attributable to the writing off to earned surplus of the balance of unamortized debt discount and expense of $78,803 and the call premiums of $210,550 on the bonds to be redeemed, less an amount equivalent to the estimated reduction in Federal income taxes resulting from such charges, which reduction has been estimated by the company to be $107,891. The latter amount will be charged by the company in 1945 to the income account—"Miscellaneous Income Deduction." [6]

Earnings

There is attached hereto as Exhibit B a corporate income statement of Kings for the twelve months ended April 30, 1945, per books, and pro forma giving effect to the proposed interim financing. [Exhibit B omitted.]

The pro-forma income statement gives effect to a provision for interest on debt of $4,200,000 on the basis of a rate of 1½ per cent per annum for five months and a rate of 3 1/10 per cent per annum for seven months.[7] On the basis of such provisions for interest, the pro-forma interest is $135,680 less than the actual requirements for the 12-month period based on the bonds presently outstanding.

The earnings-coverage ratios on the actual interest requirements of Kings, based on the 5 per cent and 6½ per cent rates applicable to the presently outstanding bonds, during and five calendar years, 1940 through 1944, have a range from 2.06 to 2.34. For the twelve months ended April 30, 1945, actual interest requirements were earned 2.19 times. On the basis of the pro-forma provision for interest for the twelve months ended April 30, 1945, such interest would be earned for 4.54 times.[8]

[6] The company states that the proposed accounting treatment is required by the Uniform System of Accounts of the Public Service Commission of the state of New York.

[7] As indicated previously, John Hancock has agreed to extend until November 30, 1945, the agreement of purchase of the first mortgage bonds of the company upon the same terms as formerly agreed.

[8] For this purpose, the pro-forma gross income has been adjusted so as to add back to the provision for Federal income taxes the

Fees and Expenses

Kings states that no fees and expenses will be incurred in connection with the issue and sale of its short-term promissory note with the possible exception of the fees and expenses of counsel for John Hancock as to which no estimate has been submitted. We shall, accordingly, reserve jurisdiction over all fees and expenses to be incurred in connection with the issue and sale of the short-term promissory note.

Conclusions

The issue and sale of the promissory note of Kings are subject to the provisions of § 6(a) of the act and must, therefore, satisfy the applicable requirements of § 7. Since the proceeds of the promissory note, together with treasury cash, are to be utilized by Kings to redeem its presently outstanding bonds, it appears that the promissory note is to be issued and sold solely for the purpose of discharging outstanding securities of Kings. Accordingly, such issue and sale satisfy the provisions of § 7(c)(2)(A). No state Commission having informed us that the state laws have not been complied with, the provisions of § 7(g) appear to be satisfied.[9] The sale of the promissory note is not subject to the competitive bidding requirements of Rule U-50 by reason of the exemption provided by paragraph (a)(2) thereof.[10]

Ordinarily, we would not deem it desirable or appropriate for a public utility company to have all its outstanding debt in the form of a short-term obligation as is here proposed. However, the promissory note of Kings is to be issued solely as interim financing for the purpose of retiring immediately its outstanding mortgage debt and is to be replaced by the 30-year first mortgage bonds to be sold shortly at competitive bidding. Moreover, the company has the standby agreement of John Hancock to purchase the first mortgage bonds at a cost of money to the company of 3 1/10 per cent. Under the circumstances of this case, we do not deem it necessary to enter any adverse findings under § 7(d).

We shall permit the declaration as to the issue and sale by Kings of its short-term promissory note to become effective, and shall reserve jurisdiction over: (1) all fees and expenses incurred by Kings in connection with the issue and sale of such note; and (2) all aspects of Kings' proposal to issue and sell its 30-year first mortgage bonds.

An appropriate interim order will issue.

ORDER

Kings County Lighting Company, a subsidiary of Long Island Lighting Company, a registered holding company, having filed an application-declaration, and amendments thereto,

amount of $107,891 shown in Exhibit B as a reduction in such taxes arising from the proposed redemption.

[9] In this connection, counsel for declarant has submitted an opinion stating that the issue and sale of the promissory note is expressly exempted from the jurisdiction of the Public Service Commission of the state of New York under a provision of § 69 of the Public Service Law which permits, without the consent of such Commission, the issuance of notes for proper corporate purposes payable at periods of not more than twelve months.

[10] Although Rule U-50 is not applicable, it may be noted that the company approached six possible purchasers of the short-term note and that the terms submitted by John Hancock were the most advantageous to the company.

pursuant to §§ 6(a), 6(b), and 7 of the Public Utility Holding Company Act of 1935, regarding (1) the issue and sale, pursuant to the competitive bidding requirements of Rule U-50, of $4,200,000 principal amount of its 3 1/10 per cent first mortgage bonds due 1975, the interest rate and redemption prices to be fixed by competitive bidding; and (2) the issue and sale, at a cash price of $4,200,000, of its promissory note (as interim financing, to be discharged with the proceeds of the issue and sale of its 3 1/10 per cent first mortgage bonds, due 1975, as described above), payable to the John Hancock Mutual Life Insurance Company in the principal amount of $4,200,000, said note to be dated June 26, 1945, to mature not later than November 30, 1945, to bear interest at a rate of 1 1/2 per cent per annum, and the proceeds thereof, together with treasury cash, to be used to redeem, on July 1, 1945, at the redemption price of 105 per cent of principal amount, its outstanding $4,211,000 principal amount of first refunding mortgage gold bonds, due July 1, 1954, of which $2,389,000 bears interest at 5 per cent and $1,822,000 at 6 1/2 per cent; and

Applicant-declarant having requested that the Commission enter an interim order at this time relating solely to the proposed issue and sale of said promissory note; and

A public hearing having been held after appropriate notice, at which the security holders of applicant-declarant and other interested persons were afforded opportunity to be heard; and requests for findings, briefs, and oral argument having been waived as to the issue and sale of said promissory note; and

The Commission having considered the record and having entered its findings and opinion herein, and deeming it appropriate in the public interest and in the interest of investors and consumers to permit the declaration, as amended, solely in regard to the issue and sale of said promissory note to become effective:

It is hereby *ordered,* pursuant to the applicable provisions of said act, including § 7 thereof, and subject to the provisions of Rule U-24 promulgated under the act, that the aforesaid declaration solely in regard to the issue and sale of said promissory note be, and hereby is, permitted to become effective forthwith; and

It is *further ordered* that jurisdiction be, and hereby is, reserved over (1) the payment of all fees and expenses incurred in connection with the issue and sale of said promissory note, and (2) all aspects of the issue and sale of said 3 1/10 per cent first mortgage bonds of Kings County Lighting Company due 1975.

FEDERAL POWER COMMISSION

Re Panhandle Eastern Pipe Line Company

Opinion No. 121, Docket No. G-620
March 31, 1945

APPLICATION *by natural gas pipe-line company for authority to construct and operate additions to pipe-line system; granted subject to conditions.*

Certificates of convenience and necessity, § 104 — Facilities for gas transportation —Gas shortage — War needs.

1. Public convenience and necessity require the construction and operation of additions to a natural gas pipe-line system to bring additional gas into an area where there is a serious natural gas shortage, necessitating frequent curtailments and interruptions in service to industries engaged in vital war production as well as disruption of service to domestic and commercial consumers, where additional supplies of gas thus made available would be no greater than the amount required to offset a decline in gas production within the area, p. 41.

Certificates of convenience and necessity, § 73 — Conditions of authorization — Pipe-line facilities — War needs.

2. A certificate of convenience and necessity authorizing the construction and operation of additions to a natural gas pipe-line system, urgently required to maintain essential war production and to meet civilian needs during the war emergency where part of the supply might be terminated after the war emergency, should be made subject to conditions as to serving new customers and abandonment of contract deliveries, in order that the Commission may retain control over the future use of the proposed facilities, p. 44.

(SMITH and DRAPER, Commissioners, concur.)

APPEARANCES: D. H. Culton and S. H. Riggs, for Applicant, Panhandle Eastern Pipe Line Company; Harry S. Littman, Stanley M. Morley, and Charles E. McGee, for Federal Power Commission; L. E. Clevenger, for State Corporation Commission of Kansas; Commissioner Paul E. Weiland, for Public Utilities Commission of Ohio; William E. Dowling and James H. Lee, for City of Detroit, Michigan; James W. Haley and Tom J. McGrath, for National Coal Association; Welly K. Hopkins and Tom J. McGrath, for United Mine Workers of America.

By the COMMISSION: This proceeding involves an application of Panhandle Eastern Pipe Line Company,[1] seeking a certificate of public convenience and necessity under § 7(c)

[1] Hereinafter called "Applicant" or "Panhandle Eastern."

of the Natural Gas Act, 15 USCA § 717f(c), to authorize the construction and operation of additions[2] to its existing pipe-line system by means of which it is proposed to increase the delivery capacity of such system by 50,000,000 cubic feet of natural gas per day.

By letter of January 25, 1945, the War Production Board requested applicant to give consideration to the feasibility of installing additional compressor stations, compressors, and loop lines for the purpose of "ameliorating the shortage [of natural gas] which otherwise will exist in the Appalachian area next winter," and to submit a plan for such purpose at the "earliest possible moment." The letter also stated that during the past winter a shortage of natural gas available to such area resulted in curtailment of war production, and that "it is absolutely essential to increase the capacity of pipe lines into the Appalachian area before the beginning of the winter of 1945–1946, in order to prevent a much more serious and prolonged interruption to war production at that time." Following the submission to WPB of the plan here proposed, Applicant was granted by that board a high preference rating for the necessary critical materials. Thereafter, on February 2, 1945, the application was filed in this proceeding, and amended on February 15th.

On February 3, 1945, we set this matter for public hearing. After appropriate notice, including notice to the regulatory Commissions of each of the states in which Applicant operates, such hearing was begun February 15th and concluded February 23, 1945.[3] The matter was submitted after oral argument made before the Commission sitting en banc on February 24, 1945, all counsel having waived briefs.

[2] The proposed facilities, and the estimated cost (totaling $8,325,000), are more fully described below:

(1) A new 2,400-horsepower compressor station at Hugoton, Kansas, in the Hugoton gas field, $435,000.

(2) Additional units to be installed at existing compressor stations: four 1,300-horsepower units at Greensburg, Kansas, compressor station, $950,000; three 1,300-horsepower units at Haven, Kansas, compressor station, $700,000; five 800-horsepower units at the Olpe, Kansas, compressor station, $700,000; five 1,000-horsepower units at Louisburg, Kansas, compressor station, $1,135,000; four 1,300-horsepower units at the Houstonia, Missouri, compressor station, $940,000; four 800-horsepower units at the Centralia, Missouri, compressor station, $525,000; four 800-horsepower units at the Pleasant Hill, Illinois, compressor station, $525,000; one 1,000-horsepower unit at the Glenarm, Illinois, compressor station, $325,000.

(3) Approximately 32 miles of 24-inch loop line at a cost of $1,077,000, consisting of 12.2 miles of 24-inch loop line in Indiana, extending the existing loop line north from Applicant's Zionsville compressor station beyond its present terminus in Wells county to the west bank of the Wabash river, and 19.9 miles of 24-inch loop line in Ohio, extending the existing loop line north from Applicant's Edgerton compressor station beyond its present terminus in Paulding county, to a point approximately 13 miles north of the Maumee river in Defiance county.

(4) Other appurtenant facilities, including changes in valves and piping at Hansford, Texas, compressor station, $90,000; Liberal, Kansas, compressor station, $150,000; Tuscola, Illinois, compressor station, $125,000; Montezuma, Indiana, compressor station, $150,000; installation of additional cooling coils at Zionsville, Indiana, compressor station, $13,000; changes in valves on the main transmission line between Hansford and Liberal compressor stations, $30,000, and changes in valves on main line No. 200, $455,000, required in connection with the proposed increase in operating pressure on Applicant's line No. 200 from 500 pounds to 600 pounds per square inch.

[3] The State Corporation Commission of Kansas, the National Coal Association, and the United Mine Workers of America were granted intervention and participated at the hearing. The city of Detroit, Michigan, through its counsel, also participated at the hearing. However, no evidence was offered by such interveners or participant.

Jurisdiction

Applicant produces and purchases natural gas in the Texas Panhandle field and in the Hugoton field in Texas, Oklahoma, and Kansas, transports such gas through its pipe-line system extending from Moore county, Texas, through Oklahoma, Kansas, Missouri, Illinois, Indiana, Ohio, and Michigan, and sells such gas for resale for ultimate public consumption in those states. Applicant concedes, and the record shows, that it is a "natural-gas company" within the purview of the Natural Gas Act, and that the proposed facilities are subject to the requirements of § 7(c) of the act, as amended.

Proposed Service

Applicant proposes to utilize the increased capacity principally to supply natural gas to The Ohio Fuel Gas Company (hereinafter called "Ohio Fuel") at two existing pipe-line interconnections, one near Maumee, Ohio,[4] the other at the Ohio-Indiana state line near Muncie, Indiana, under a contract dated February 9, 1945, calling for deliveries to Ohio Fuel of 25,000,000 cubic feet of gas daily for twenty years, and an additional 25,000,000 cubic feet daily for a period not to exceed five years.[5] Deliveries have heretofore been made by Applicant to Ohio Fuel at these interconnections from time to time commending in 1942, pursuant to a number of interim directives of the War Production Board.

Ohio Fuel, an operating subsidiary of Columbia Gas & Electric Corporation, serves natural gas through a network of lines in Ohio to some 400,000 consumers in 354 communities in that state, including Columbus, Toledo, Springfield, and Mansfield, Ohio. It also supplies the natural gas requirements of The Dayton Power & Light Company, which serves Dayton and other communities in Ohio, and a portion of the requirements of The Cincinnati Gas and Electric Company which serves Cincinnati and environs. Ohio Fuel produces natural gas from its wells in Ohio and purchases gas from local producers in that state. It also secures substantial volumes of gas through existing pipeline interconnections from affiliated companies in the Columbia system, which produce and purchase such gas in Kentucky and West Virginia. Since the completion last fall of the transmission line of Tennessee Gas and Transmission Company extending from the Stratton-Agua Dulce field in Texas to Kenova and Cornwell, West Virginia,[6] approximately

[4] Recognizing the necessity for augmenting the Appalachian gas supplies, we issued, on October 2, 1942, a certificate of public convenience and necessity to Panhandle Eastern authorizing it to construct and operate the "Maumee interconnection" consisting of a 16-inch natural-gas pipe line extending some 88,700 feet from a point on its main 22-inch line near the Ohio-Michigan state line in Lucas county, Ohio, and connecting with a 16-inch line of Ohio Fuel at a point immediately west of the village of Maumee, Ohio. In Re The Ohio Fuel Gas Co. and Panhandle Eastern Pipe Line Co. (1942) Docket Nos. G-408, G-410, 3 Fed PC 301, 46 PUR(NS) 165. Also see orders entered January 13, 1943, and November 30, 1943, modifying such certificate.

[5] The contract provides for cancellation of the deliveries of the additional 25,000,000 cubic feet by either party, upon ninety days' notice, after the War Production Board or its successor shall (1) cease to exercise war emergency jurisdiction over the parties in connection with dispatching of natural gas or, (2) advise the parties that control of the dispatching of natural gas from Panhandle's system is no longer necessary to the furtherance of the war effort.

[6] The construction and operation of the

200,000,000 cubic feet of gas per day has been delivered through such line into the Appalachian area, of which some 100,000,000 cubic feet per day has been supplied through United Fuel Gas Company to other subsidiaries in the Columbia system, including Ohio Fuel. It is apparent that on the extent Ohio Fuel's requirements are met by Panhandle Eastern, gas now obtained from other sources will be available to alleviate deficiencies elsewhere in the Appalachian area. Therefore, the application involves not only the natural-gas supplies and requirements of Ohio Fuel, but in its broader aspect, those of the entire Appalachian territory.

Public Convenience and Necessity

[1] Careful consideration of the record leads to the conclusion that the public convenience and necessity require the construction and operation of the proposed facilities. It is clear from the evidence that the natural-gas supplies presently available to the Appalachian area are inadequate for the proper maintenance of essential domestic, commercial, and industrial service and should be augmented by the additional volumes of gas proposed to be furnished by Applicant.

During the past winter, the Appalachian area experienced a serious natural-gas shortage, necessitating frequent curtailments and interruptions in service to industries engaged in vital war production. Service to domestic and commercial consumers was seriously threatened, and in some instances even completely disrupted. The situation was particularly acute in the territory served by Ohio Fuel where several communities in western Ohio were entirely without gas for short periods, and the continuance of gas service to large cities such as Dayton, Toledo, Columbus, and Cincinnati, Ohio, was for a time in jeopardy. In fact, the governor of Ohio, on February 1, 1945, ordered state offices closed for three days beginning February 3rd, and requested all mayors and officials of other political subdivisions to take similar action, while on the latter date he urged that public offices, business establishments, schools, libraries, and art museums be closed at least one day per week to conserve fuel.

During the month of December, 1944, the curtailment on the Ohio Fuel system alone amounted to 242,000,000 cubic feet, and during the month of January the curtailment on that system reached 989,000,000 cubic feet. On the peak day of February 2, 1945, the Columbia system effected curtailments of natural-gas service to its customers totaling 188,000,000 cubic feet, notwithstanding the fact that approximately 80,000,000 cubic feet was withdrawn from storage on that day and some 43,000,000 cubic feet was received from Panhandle Eastern and other systems through the issuance of emergency directives of the War Production Board. During the period from January 1st through February 18, 1945, the average curtailment on the Columbia system in the Appalachian area was in excess of 98,000,000 cubic feet per day notwithstanding the receipt of

Tennessee line were authorized by our opinion and order entered September 24, 1943, in Re Tennessee Gas & Transmission Co. Docket No. G-230, 3 Fed PC 574.

average daily deliveries of approximately 10,000,000 cubic feet per day from Panhandle Eastern and other pipe-line systems during such period under WPB directives.

It is true that the substantial deliveries into the Appalachian area of additional gas through the new line of Tennessee Gas and Transmission Company from the Stratton-Agua Dulce field in Texas, which commenced last fall, will materially assist in meeting the demands of the 1945–1946 winter through replenishing the underground storage facilities throughout the coming summer. However, the evidence clearly indicates that it will be necessary to augment further the supplies in the Appalachian region in order to assure the maintenance of adequate service. The heavy wartime demands upon the wells and reserves in the Appalachian area, coupled with the steady decline of rock pressures in the gas fields in that area, have materially reduced deliverability. Moreover, the sharp decline in production from the once prolific Oriskany sand in West Virginia renders it increasingly difficult to supply peak-day demands.[7]

In the year 1942, natural gas production within the Appalachian area was sufficient to supply the gas requirements of that area without serious curtailment of service to consumers. Since that year, however, natural gas production in the area has declined substantially, particularly in the Oriskany sand area of Kanawha and Jackson counties, West Virginia, and at the same time the demand for natural gas in the area has increased due to the war. This has created a need for additional natural-gas supplies to be brought into the Appalachian area from other producing areas.

The record in this proceeding shows the effect of this decline in production and increase in demand upon the needs of Columbia Gas & Electric Corporation, whose subsidiaries constitute the largest natural gas system in the Appalachian area. In 1942, Columbia's sales, both wholesale and retail, were 168,000,000,000 cubic feet,[8] while in 1946 (the first full year of operation of Panhandle Eastern's proposed facilities) sales are estimated by Columbia at 177,000,000,000 cubic feet,[9] which is 9,000,000,000 cubic feet, or 5 per cent, more than in 1942. In 1942, the Columbia system produced and purchased 52,000,000,000 cubic feet of natural gas from Oriskany wells in Jackson and Kanawha counties, West Virginia, but by 1946, according to the testimony of witnesses for the Applicant, this once prolific producing area will be practically exhausted and Columbia will receive only 2,000,000,000

[7] For example, the deliverability of the Oriskany wells in West Virginia available to the Columbia system declined from 180,000,000 cubic feet per day in 1942 to 24,000,000 cubic feet per day in 1944. Columbia estimates that such deliverability will decline to 6,000,000 cubic feet per day in 1946.

[8] Columbia system's sales of 168,000,000,000 cubic feet in 1942 represent 40 per cent of the total sales to consumers in that year as reported by the United States Bureau of Mines for states comprising the Appalachian area.

[9] This estimate assumes that the German phase of the war will be over by the end of 1945, and that industrial consumption of natural gas in 1946 will be 12,000,000,000 cubic feet less than in 1945 due to reduced war production. Should industrial production and industrial consumption of natural gas in 1946 be maintained at the 1945 level, estimated total sales in 1946 would be 189,000,000,000 cubic feet, which is 21,000,000,000 cubic feet or 13 per cent more than in 1942.

cubic feet from such wells. This represents a decline of 50,000,000,000 cubic feet in annual gas supply. Likewise, between 1942 and 1946, a decline of 2,000,000,000 cubic feet in the annual volume of gas produced and purchased by the Columbia system from several thousand shallow sand wells in the Appalachian area is anticipated. This reduction in shallow well production is anticipated due to the decline in deliverability of such wells despite their operation during a greater percentage of the year than had previously been the practice, and notwithstanding the conduct of what was characterized by a Columbia witness as an "all-out drilling program to drill as many wells as the man-power and material situation permitted."

Thus, merely to offset the decline in local production and to restore the Columbia system's annual gas supply in 1946 to the same level as in 1942 will, according to estimate submitted in this record, require the receipt by Columbia of approximately 52,000,000,000 cubic feet of gas from other sources in 1946. It would, therefore, appear that the additional supplies of natural gas available to the Columbia system through the facilities of the Tennessee Gas and Transmission Company, heretofore authorized, plus the amount here under consideration, will be no greater than the amount required to offset the decline in production within the Appalachian area available to Columbia.

Additionally, it is noted that the governor of Ohio, by letter to this Commission dated February 13, 1945, read into the record in this proceeding, has urged "prompt consideration and approval" of the application. A member of the Public Utilities Commission of that state testified in support of such application. And, the War Production Board has advised that the proposed facilities are "an important part of the program to increase supplies all too evidently required to maintain war production in the Appalachian area next winter," and are "urgently needed to support war production and essential civilian activities."

Financing

Applicant proposes to finance the cost of constructing the proposed facilities, drilling additional wells and installing additional field facilities by an issue of $10,000,000 principal amount of first mortgage and first lien 2¾ per cent bonds, series D, to be issued under and secured by its outstanding mortgage and deed of trust of November 1, 1940. Applicant presented in evidence a firm commitment under which five insurance companies have agreed to purchase the entire issue.

Gas Supply

It appears from the evidence that the gas reserves available to Applicant under lease and gas purchase contracts are adequate for the proper maintenance of both the existing and proposed service. Applicant submitted in evidence an estimate showing that its recoverable gas reserves under leases and subject to gas-purchase contracts totaled in excess of 4,208,000,000 thousand cubic feet, of which approximately 3,032,000,000 thousand cubic feet are in the Hugoton field and 1,176,000,000 thousand cubic feet are in the Texas Panhandle field. At the expected annual rate of

withdrawal of 133,000,000 thousand cubic feet, which includes the proposed additional deliveries, such reserves would last more than thirty years.

Position of Interveners

[2] Intervener, the State Corporation Commission of Kansas, desiring that the natural-gas reserves of that state be conserved for utilization in the mid-continent area, does not oppose the construction and operation of the proposed facilities in so far as the same may be found necessary for the prosecution of the nation's war effort. It urges, however, that the certificate should be so conditioned as to permit further inquiry respecting the use to be made of such facilities after the war emergency has passed. The National Coal Association and United Mine Workers of America oppose the application and further contend, in the alternative, that the certificate, if granted, should be issued only on a temporary wartime basis.[10]

The evidence clearly establishes that the proposed facilities are urgently required to maintain essential war production and to meet civilian needs during this emergency. Furthermore, the agreement between Applicant and The Ohio Fuel Gas Company provides that one-half of the 50,000,000 cubic feet shall be delivered to Ohio Fuel daily during a period of twenty years, but that the other one-half may be terminated by either party after the war emergency. Panhandle Eastern has not presented any specific plan for the disposition of the second 25,000,000 cubic feet in the event of termination, but the evidence indicates the company's intention to utilize such gas for the purpose of expanding its industrial and other markets at such time.[11] In the circumstances, we believe the public convenience and necessity require that some reasonable degree of control over the future use of the proposed facilities be retained by this Commission. Accordingly, we shall attach to the issuance of the certificate in this proceeding the conditions that (1) the facilities herein authorized shall not be used for either the transportation or sale of natural gas, subject to the jurisdiction of this Commission, to any new customers of Applicant without specific authorization first obtained from this Commission, and (2) Applicant shall not abandon or terminate any service rendered by means of such facilities to The Ohio Fuel Gas Company without first obtaining the approval of the Commission in accordance with the requirements of the Natural Gas Act, notwithstanding any provisions for termination of deliveries contained in the contract between Applicant and The Ohio Fuel Gas Company, dated

[10] Counsel for the city of Detroit, Michigan, advised by letter after the close of the hearing that he "withdraws any opposition" to the application in this proceeding.

[11] It is also noted that Applicant has filed with the Commission, in Docket Nos. G-612 and G-619, applications under the Natural Gas Act for authority to export substantial quantities of natural gas to Canada and to construct and operate certain facilities for such purpose. Protests have been filed in such proceedings by the Chairman of the Railroad Commission of Texas, and by Public Service Company of Indiana, a customer of Applicant. Moreover, applications to intervene in such proceedings have been filed by, and granted to, the State Corporation Commission of Kansas, the Public Service Commission of Indiana, the public counsellor of Indiana, and the Pennsylvania Public Utility Commission. The Michigan Public Service Commission and the city of Cleveland, Ohio, have also indicated their interest in this matter.

February 9, 1945.[13] These conditions shall not be construed as relieving Applicant from the necessity of complying with any order, rule, regulation, or other requirement of the War Production Board.

Conclusion

Upon consideration of the entire record before us, we conclude that the public convenience and necessity require the construction and operation of the proposed facilities described in the application, as amended; and that Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

In the circumstances, we conclude that an appropriate order should be adopted, issuing a certificate of public convenience and necessity to Applicant in accordance with this opinion.

SMITH, Commissioner, concurring: It would be desirable, if the circumstances permitted, to defer definitive action on the instant application until the Commission might have before it on the record all the pertinent facts relating to the other pending applications designed to provide major additions to the gas supply of the area involved herein. In this manner it would be possible for the Commission to consider fully the supplementary or competitive aspects of various proposals to replenish or augment the gas supply of the region, to the end that the requirements of the public interest might be met in the most comprehensive and effective way possible.

It is unfortunate that such a course cannot be followed at this time; that this is not feasible is attributable directly to the exigencies of the wartime situation. It has been shown upon this record that there exists in the area to be served an urgent need for additional gas, much of which is wanted for use in war industries. The War Production Board is concerned over the situation and deems it essential that the pipe-line capacity into the Appalachian area be increased before the beginning of next winter. The War Production Board has granted the priorities necessary for the construction of this project and certain others (Re Tennessee Gas & Transmission Co. Docket No. G–621, and Re United Gas-Pipe Line Co. Docket No. G–622), so that Applicant's project, if authorized and constructed promptly, can be in operation soon enough to afford substantial protection against the threatened shortage during the winter of 1945–1946. The War Production Board, however, has advised us that, in view of the acute shortage of steel in the second quarter of 1945, it does not contemplate immediate action on applications for priorities covering the construction of other lines, for which certificates from this Commission have been applied for (Re American Light & Traction Co. Docket No. G–624, and Re Metropolitan Eastern Corp. Docket No. G–625), involving construction of such dimensions that it is improbable that they could be completed in time to

[13] Section 7(e) provides that the Commission shall have the power "to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require."

supply additional gas in the Appalachian area by next winter.

Under these circumstances, therefore, it is apparent that the only practical method of dealing with the problem is to grant without delay the appropriately conditioned certificate authorized herein.

DRAPER, Commissioner, concurring: I join in the above expression.

ORDER

Upon consideration of the entire record herein, the Commission having this day adopted its Opinion No. 121, which is hereby referred to and made a part hereof by reference;

The Commission finds that:

(1) Panhandle Eastern Pipe Line Company (Applicant) is engaged in the transportation of natural gas in interstate commerce and in the sale in interstate commerce of natural gas for resale for ultimate public consumption, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The proposed facilities will be used for the transportation and sale of natural gas, subject to the jurisdiction of the Commission, and the proposed construction and operation thereof are subject to the requirements of subsections (c) and (e) of § 7 of the Natural Gas Act, as amended.

(3) Applicant is able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the Natural Gas Act, as amended, and the requirements, rules and regulations of the Commission thereunder.

(4) The public convenience and necessity require the construction and operation of the proposed facilities described in the application, as amended, and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission *orders* that:

(A) A certificate of public convenience and necessity be and it is hereby issued authorizing the construction and operation by Applicant of the proposed facilities referred to in Opinion No. 121, and more fully described in the application, as amended in this proceeding, for the transportation and sale of natural gas therein set forth, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) This certificate is granted upon the express conditions that (1) the facilities herein authorized shall not be used for either the transportation or sale of natural gas, subject to the jurisdiction of this Commission, to any new customers of Applicant except upon specific authorization first obtained from this Commission, and (2) Applicant shall not abandon or terminate any service rendered by means of such facilities to The Ohio Fuel Gas Company without first obtaining the approval of the Commission in accordance with the requirements of the Natural Gas Act, notwithstanding any provisions for termination of deliveries contained in the contract between Applicant and The Ohio Fuel Gas Company, dated February 9, 1945.

(C) Applicant shall promptly report to the Commission in writting, under oath, the dates of completion and commencement of operation of such facilities.

(D) This certificate shall not be transferable and is without prejudice to the authority of this Commission

or any other regulatory body with respect to rates, contracts, service, accounts, valuation, estimate or determination of cost, or any other matters whatsoever now pending or which may come before this Commission or other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) Nothing herein is to be construed as affecting in any manner the determination of the service area of Applicant under § 7(f) of the Natural Gas Act, as amended.

(F) Nothing contained in this order shall be construed as in any manner changing or affecting the Commission's opinion and accompanying order reducing rates, entered September 23, 1942, in Docket Nos. G–200 and G–207, Re Panhandle Eastern Pipe Line Co. and Detroit v. Panhandle Eastern Pipe Line Co. 3 Fed PC 273, 292, 45 PUR(NS) 203, or in any manner relieving Applicant from filing new rate schedules reflecting the reduction in rates in conformity therewith.

(G) This certificate shall be effective as long as Applicant continues the operations hereby authorized in accordance with the provisions of the Natural Gas Act, as amended, and any pertinent rules, regulations, or orders heretofore or hereafter issued by the Commission.

(H) Nothing contained herein shall be construed as relieving Applicant from the necessity of complying with any order, rule, regulation, or other requirement of the War Production Board.

(I) Appropriate evidence of the issuance of this certificate shall be furnished to Applicant.

SECURITIES AND EXCHANGE COMMISSION

Re North American Company

File No. 70–1071, Release No. 5796
May 15, 1945

DECLARATIONS *and applications of holding company relating to acquisition of stock of subsidiary and redemption of preferred stock; approval granted subject to conditions.*

Consolidation, merger, and sale, § 24.1 — Securities of subsidiary — Holding company integration.

1. A holding company, ordered to divest itself of its interests in a subsidiary public utility company, was permitted, as a step toward compliance with the order, to sell at competitive bidding part of its investment in the subsidiary, subject to conditions that the price and terms and conditions of sale to be determined by competitive bidding should be found to satisfy the standards of § 12(d) of the Holding Company Act, 15 USCA § 79*l*(d), p. 53.

Security issues, § 5 — Redemption of preferred stock — Holding company.

2. A holding company, permitted to sell a part of its common stock investment in a subsidiary utility company which was to be divested under order of the Securities and Exchange Commission, was authorized to redeem one series of its preferred stock in accordance with the redemption provisions thereof, by using a part of the proceeds of such sale of stock, where this would not impair the financial integrity of the holding company or its subsidiaries, p. 54.

Consolidation, merger, and sale, § 42 — Stock acquisition — Stabilization of market.

3. A holding company, directed to dispose of its interest in securities of a subsidiary and permitted to sell a large block of common stock of the subsidiary at competitive bidding, was authorized to acquire shares of such stock on stock exchanges for the purpose of stabilizing the market price during a limited period of time on the day of the opening of bids, subject to conditions with respect to disclosure and future divestment, p. 55.

Accounting, § 36 — Sale of subsidiary stock.

4. A holding company, permitted to sell common stock holdings in a subsidiary utility company, was permitted to credit to Earned Surplus account any excess of net proceeds over and above the book amount at which it carried the stock, it appearing that because of the tax relief which was believed to be available under §§ 371 and 1808 of the Internal Revenue Code, 26 USCA §§ 371, 1808, no taxable gain on the sale of the stock would be realized and no reserve for taxes required, p. 55.

Accounting, § 30 — Stock redemption premium.

5. A holding company redeeming a class of preferred stock was permitted to charge to earned surplus the amount of redemption premium payable, p. 55.

Intercorporate relations, § 19.8 — Holding company simplification — Statement under tax law.

6. An order permitting the sale of stock of a subsidiary of a holding company, which had been ordered to divest itself of its interest in the subsidiary, and permitting redemption of preferred stock should be granted its request for a statement under the Internal Revenue Code in the Commission's order that the sale and redemption are necessary or appropriate to effectuate the provisions of § 11(b) of the act, 15 USCA § 79k(b), where these transactions appear to be an appropriate step in carrying out the divestment order, p. 56.

(HEALY, Commissioner, dissents in part.)

APPEARANCES: Houston H. Wasson, of Sullivan and Cromwell, of New York city, for The North American Company; H. F. Reindel of Cahill, Gordon, Zachry & Reindel, of New York city, for the prospective purchaser; Robert F. Krause and Edward V. Ahern, for the Public Utilities Division of the Commission.

By the COMMISSION:

Introduction

The North American Company (North American), a registered

holding company, has filed with the Commission an application and declaration and amendments thereto pursuant to the Public Utility Holding Company Act of 1935 and to the applicable rules and regulations promulgated thereunder. The application and declaration, as amended, relate to the proposed sale by North American of part of its holdings of common stock of Pacific Gas and Electric Company (Pacific), a subsidiary of North American, and the application of the net proceeds thereof together with treasury funds to the redemption of North American's outstanding serial preferred stock, 6 per cent series. North American also proposes to modify its loan agreement dated August 3, 1943, with The Chase National Bank of the city of New York and certain other banks. At the present time, North American owns 1,420,505 shares of common stock of Pacific, constituting 11.99 per cent of the total voting power of Pacific's voting stock. The Commission by its order of April 14, 1942, pursuant to § 11(b) of the act, 15 USCA § 79k(b) directed North American to dispose of its interest in Pacific.[1]

After appropriate notice, a public hearing was held and the Commission having examined the record makes the following findings:

Proposed Transactions

North American proposes to invite sealed written proposals, in accordance with the provisions of Rule U–50, for the purchase of 700,000 shares of its present holdings of 1,420,505 shares of common stock of Pacific.[2] It is contemplated that the proposals for the purchase of the stock will be opened at 3 P.M. on Tuesday, May 22, 1945. If North American accepts any proposal, it will immediately enter into an agreement with the successful bidder for the sale of the stock, subject to our approval pursuant to § 12 (d) of the act, 15 USCA § 79*l*(d), as it applies to the price and terms of the sale, the maintenance of competitive conditions and other matters.

The net proceeds from the proposed sale of the common stock of Pacific will be applied by North American to the redemption of its 606,359 outstanding shares of serial preferred stock, 6 per cent series, at the redemption price of $55 per share or an aggregate price of $33,349,745, plus accrued dividends. The remaining funds required for the redemption will be provided by the sale of U. S. Government securities and treasury cash.

[1] Re The North American Co. and its subsidiary companies (1942) Holding Company Act Release No. 3405, 43 PUR(NS) 257. The North American Company petitioned for review of that portion of this order which directed action on its part, and the United States circuit court of appeals for the second circuit affirmed the Commission (1943) 47 PUR(NS) 6, 133 F(2d) 148. On March 1, 1943, the Supreme Court granted a writ of certiorari, solely on the constitutional issues presented, and the matter is now pending before that court on the reserve calendar for lack of a quorum.

[2] North American first acquired common stock of Pacific in 1930 through a purchase of such shares from Western Power Corporation. Subsequent acquisitions from that company, purchases for cash and acquisition of additional stock upon original subscription brought North American's holdings of Pacific common stock to a maximum of 2,002,770 shares at the end of 1936. Since July, 1943, North American has distributed a portion of these shares as quarterly dividends on its common stock. As of March 31, 1945 North American held 1,420,505 shares of Pacific common stock and has filed an application (File No. 70–1076) contemplating a further distribution of approximately 75,000 shares as a dividend on July 2, 1945.

In connection with the foregoing transactions, North American proposes to modify its loan agreement, dated August 3, 1943, with The Chase National Bank of the city of New York and certain other banks under which bank loan notes in the principal amount of $25,337,425 were outstanding as of March 31, 1945. The notes are secured by the pledge of certain of the portfolio securities of North American, including shares of Pacific common stock. The proposed modification will be effected by a supplemental agreement under which the holders of the bank loan notes consent to the redemption of the preferred stock from the proceeds of the sale of Pacific stock and agree to a reduction of the amount of Pacific stock pledged as collateral under the loan agreement. In the event that the pledged securities are transferred to regional holding companies, as contemplated in a pending plan filed by North American under § 11(e) of the act,[3] provision is made in the loan agreement for the assumption by each of four proposed regional holding companies of specified portions of the bank loan notes. The proposed modification will alter the portions of the total indebtedness which may be assumed by each regional holding company; new notes giving effect to these revisions will be exchanged for those now held by the banks.

In connection with the proposed sale of Pacific common stock, North American also requests authority to acquire an indeterminate number of shares of such stock for the purpose of stabilizing the market price thereof on the New York Stock Exchange and the San Francisco, Los Angeles, and Philadelphia Stock Exchanges on the day fixed by North American for the opening of proposals for the purchase of the Pacific stock. The period in which stabilizing operations could be undertaken would extend from 10 A.M. of the day on which proposals are opened to the time of the opening of the proposals later in that day.[4]

Pacific Gas and Electric Company

Pacific operates in 46 counties in northern and central California, serving, among others, the cities of San Francisco, Oakland, Sacramento, Berkeley, San Jose, and Fresno. Electricity is served in some 376 communities, gas (of which 99 per cent is natural gas) in 187 communities, water in 16 communities and steam in 2 communities. Pacific produces the bulk of its power in hydroelectric stations which are supplemented by production in steam stations and purchases from other companies, principally Southern California Edison Company and The California Oregon Power Company. Natural gas is purchased with minor exceptions from independent producing companies. In 1944 revenues from electric sales constituted 70.9 per cent of gross operat-

[3] See notice of filing and order for hearing with respect to the plan, Holding Company Act Release No. 4486, Aug. 11, 1943. Although hearings have been held on the plan, no determination has been made of the issues presented by the plan.

[4] Authorization for the stabilization of the price of a security in connection with a proposed public offering is ordinarily not required, apart from the Holding Company Act. In the pending case, however, North American must receive our authorization to purchase Pacific stock because, as a registered holding company, it cannot acquire any shares of any public utility company except upon application and approval as provided in §§ 9 and 10 of the Holding Company Act, 15 US CA §§ 79i, 79j.

ing revenues and gas sales 28.5 per cent.

A condensed consolidated balance sheet per books of Pacific and its subsidiary companies at December 31, 1944, appears below:

TABLE I

Assets	
Property Plant and Equipment..	$833,411,800
Investments	5,327,385
Sinking Funds and Special Deposits	2,988,507
Cash and Government Securities	20,564,371
Other Current Assets	17,681,905
Deferred Charges	14,408,594
Total Assets	$894,382,562
Liabilities	
Funded Debt:	
San Joaquin Light and Power Corporation 6's of 1952 [5] (Assumed)	$8,194,500
Pacific Gas and Electric Company	
First and Refunding	
4's 1945 [6]	84,193,000
3½'s 1961 [7]	2,487,000
3¼'s 1966	49,927,000
3's 1970	19,273,000
3's 1971	23,967,000
3's 1974	111,717,000
Total Funded Debt	$299,758,500
Preferred Stock [8]	
6% Cumulative First Preferred ($25 Par)	$105,291,550
5½% Cumulative First Preferred ($25 Par)	29,329,075
5% Cumulative First Preferred ($25 Par)	10,000,000
Total	$144,620,625
Net Premium on Capital Stock	$460,150
Minority interest in subsidiary company	16,160
Current Liabilities	42,507,428
Reserve for Depreciation and Amortization	182,519,833
Other reserves	11,875,151
Common Stock and Surplus	
Common Stock ($25 Par Value—6,261,357 shares)	$156,533,925
Earned Surplus	55,484,389
Capital Surplus	606,401
Total Common stock and Surplus	$212,624,715
Total Liabilities	$894,382,562

The reserve for depreciation and amortization of Pacific and its subsidiary companies in the amount of $182,519,833 is equal to 21.9 per cent of gross property account per books. During the 5-year period 1940 through 1944, inclusive, the average maintenance expense and provision for depreciation and amortization amounted to 17.6 per cent of gross operating revenues.

The following tabulation contains condensed consolidated income statements of Pacific and its subsidiaries as reported by Pacific for the last five years:

TABLE II

	1940	1941	1942	1943	1944
			(000 Omitted)		
Gross Operating Revenues	$109,980	$115,354	$126,782	$138,593	$151,773
Operating Expenses:					
Maintenance and Depreciation	$20,176	$21,264	$22,822	$24,516	$25,941
All Other Expenses (excluding Federal Income and Excess Profits Taxes)	45,603	49,048	55,805	58,663	61,501
Federal Income Taxes	6,907	8.901	10,362	10,799	17,467
Excess Profits Taxes	1,164	1,891	4,489	11,846	12,682
Total Operating Expenses	$73,850	$81,104	$93,478	$105,824	$117,591

[5] These bonds are noncallable.

[6] These bonds have been called for redemption on June 1, 1945. Funds for such redemption were obtained in part by the issue and sale on March 29, 1945, of $80,000,000 of 3 per cent bonds due 1977 at a price to the company of 106.879 per cent of the principal amount.

[7] These bonds were called for redemption on January 1, 1945.

[8] These preferred stocks are not redeemable.

TABLE II—Continued

	1940	1941	1942	1943	1944
Net Operating Revenues	$36,130	$34,250	$33,304	$32,769	$34,182
Other Income	212	223	333	389	318
Gross Income	$36,342	$34,473	$33,637	$33,158	$34,500
Income Deductions (net)	11,669	12,009	11,369	10,811	12,463
Net Income	$24,673	$22,464	$22,268	$22,347	$22,037
Preferred Stock Dividend Requirements	7,911	7,973	8,401	8.411	8.411
Balance Applicable to Common Stock	$16,762	$14,491	$13,867	$13,936	$13,626
Dividends Paid on Common Stock	12,523	12,523	12,523	12,523	12,523
Balance to Surplus	$4,239	$1,968	$1,344	$1,413	$1,103
Earned Per Share of Common Stock	$2.68	$2.30	$2.21	$2.23	$2.18
Dividends Paid Per Share of Common Stock	2.00	2.00	2.00	2.00	2.00
Per cent of Gross Income Applicable to Common Stock	46.1%	42.0%	41.2%	42.0%	39.5%

During the same 5-year period, 1940 through 1944, the high and low sales prices of the common stock of Pacific on the New York Stock Exchange were as follows:

	1940	1941	1942	1943	1944
High	34⅜	28⅞	24½	31½	35⅛
Low	25½	17½	15½	23½	30

During 1945 up to and including May 14, 1945, the stock has ranged from a low of 34⅛ to a high of 38⅝, with the closing sale on May 14, 1945, being 38⅝.

Effect of Proposed Transactions on North American

The effect of the proposed sale of the Pacific common stock and the redemption at $55 per share of North American's 6 per cent preferred stock is shown in the following corporate balance sheet of North American as of March 31, 1945:

TABLE III

	Actual per Books	Pro Forma	Change
Assets			
Investments:			
Pacific common stock	$45,226,909	$22,939,880	($22,287,029)
Other investments	191,608,046	191,608,046	.....
Cash & Government securities	11,534,813	3,385,068	(8,149,745)
Other Current Assets	1,817,080	1,817,080	.....
Office Furniture, etc.	1	1	.....
Total Assets	$250,186,849	$219,750,075	($30,436,774)
Liabilities			
2% Bank Loan Notes (excluding current maturities)	$19,337,425	$19,337,425	.....
6% Serial Preferred Stock ($50 Par Value)	30,317,950	.....	($30,317,950)
5½% Serial Preferred Stock ($50 Par Value)	34,819,000	34,819,000	.....
Current Liabilities	8,153,027	8,153,027	.....
Reserve for Investments and Contingencies	55,322,767	55,322,767	.....
Other Reserves	402,250	402,250	.....
Common Stock and Surplus:			
Common Stock ($10 Par Value)	85,726,260	85,726,260	.....
Paid-in Surplus	312,994	312,994	.....
Earned Surplus	15,795,176	15,676,352	2,912,791 (3,031,795)
Total Liabilities	$250,186,849	$219,750,075	($30,436,774)

( ) Denotes red figures.

North American carries the Pacific common stock on its books at an average cost of $31.84 per share. The pro forma balance sheet prepared by North American reflects the sale of the 700,000 shares of Pacific common stock at an assumed price to North American of $36 per share. On that basis North American would realize a profit of $2,912,291 on the sale, which is to be credited to its Earned Surplus Account. The premium applicable to the redemption of the 6 per cent preferred stock, which aggregates $3,031,795, is to be charged to the Earned Surplus Account.

The following condensed corporate income statements of North American for the twelve-months' period ending March 31, 1945, actual (as adjusted)[9] and pro forma, show the effect of the proposed transactions on earnings, based on the company's assumption, for purposes of the pro-forma statement, that it received $36 per share for the Pacific common stock:

TABLE IV

	Adjusted[9] Actual	Pro Forma	Change
Dividend Income			
On Pacific Common Stock	$2,841,010	$1,441,010	($1,400,000)
On Stocks of other Companies	14,282,968	14,282,968	.....
Interest income	90,786	33,421	(57,365)
Total	$17,214,764	$15,757,399	($1,457,365)
Expenses	$987,393	$987,393	.....
Federal Income Taxes	675,000	610,000	(65,000)
Other Taxes	143,149	143,149	.....
Total Expenses and Taxes	$1,805,542	$1,740,542	($65,000)
Income Available for Charges	$15,409,222	$14,016,857	($1,392,365)
Interest on Bank Loan Notes	506,749	506,749	.....
Net Income	$14,902,473	$13,510,108	($1,392,365)
Preferred Stock Dividend Requirements	3,821,249	2,002,172	(1,819,077)
Balance Available for Common Stock	$11,081,224	$11,507,936	$426,712
Coverage on Interest and Preferred Dividends	3.56x	5.58x	.....
Earned per share of Common Stock	$1.29	$1.34	.....

Compliance with the Act

Sale of Pacific Common Stock

[1] The proposed sale of common stock of Pacific by North American must meet the requirements of § 12 (d) of the act and Rule U–44. The provisions of § 12(d) require, among other things, that the Commission examine into such matters as the consideration to be received in the sale, maintenance of competitive conditions, fees and commissions, accounts, and disclosure of interest. Inasmuch as the sale is proposed to be effected in accordance with the provisions of Rule U–50, we cannot be advised with

[9] Adjusted (a) to eliminate dividend income on shares of Pacific common stock which were distributed as stock dividends on the common stock of North American during the 12-month period ending March 31, 1945, (b) to eliminate interest charge on bank loan notes paid off during the same period and (c) to reflect the reduction in Federal Income Tax resulting from the above adjustments.

respect to most of these matters until the results of the competitive bidding have been made a matter of record herein. However, we have previously ordered North American to divest itself of its interest in Pacific, and to the extent that the proposed sale constitutes a step toward compliance with this order and § 11(b)(1) of the act, it appears generally appropriate. At this time we observe no basis for adverse findings and the declaration with respect to the sale will be permitted to become effective subject to a reservation of jurisdiction over the consideration to be received, maintenance of competitive conditions, fees and commissions, and disclosure of interest after the results of the bidding have been made a matter of record in this proceeding.

Redemption of Preferred Stock by North American

[2] The redemption of North American's serial preferred stock, 6 per cent series, is subject to the provisions of § 12(c) of the act and Rule U-42. The preferred stock to be redeemed is cumulative as to dividends, has a par value of $50 per share, is entitled to $50 per share, plus accrued dividends, upon voluntary or involuntary liquidation of the company and is redeemable in whole or in part, at the option of the company, upon thirty days' notice at $55 per share, plus accrued dividends. As previously stated North American proposes to redeem the stock at its redemption price of $55 per share.

The record indicates that the use of the net proceeds from the sale of the common stock of Pacific and treasury funds for the redemption of the preferred stock, will not impair the financial integrity of North American or its subsidiaries.

With respect to the propriety of the proposed payment of the call price of $55 per share plus accrued dividends, to retire the serial preferred stock, 6 per cent series, the record indicates that it is financially advantageous to North American under present market conditions to sell 700,000 shares of common stock of Pacific and use the proceeds thereof, together with other funds not currently needed in its business, to redeem its serial preferred stock, 6 per cent series. This is because Pacific common stock, now selling on a yield basis of 5.19 per cent, together with other assets yielding very little income, will be employed to redeem a 6 per cent stock at $55 per share, or on a 5.45 per cent basis. We have seen, as set forth in Table IV, that a result of the transactions will be an increase in the earnings available to the common stock of North American on a pro forma basis.

We conclude that the retirement of the serial preferred stock, 6 per cent series, at its redemption price of $55 per share is appropriate in the light of all pertinent circumstances and observe no basis for adverse findings under § 12(c). We are not at this time, of course, passing upon the fairness of North American's pending plan, previously referred to, as it relates to the retirement of the remaining preferred stock. The price at which this remaining preferred should be retired will be taken up in connection with our future consideration of the pending plan or any other proposal which may be presented, in the light of the circumstances as they may then

exist. We note in this connection, however, that the assets of North American are fully adequate to cover either the liquidating preference or the redemption price of the remaining series of preferred stock.

Modification of Loan Agreement

The proposed modification of the loan agreement, dated August 3, 1943, is subject to the requirements of §§ 6 (a) and 7 of the act, 15 USCA §§ 79f (a), 79g. The exchange of the new bank loan notes for those presently outstanding comes within the provisions of § 7(c)(2)(A). The modification will not result in any change in the aggregate principal amount of the outstanding notes, or in the maturities, rate of interest or other characteristics thereof. We find that the standards of § 7 are satisfied.

Stabilization by North American of Market Price of Pacific Common Stock

[3] The acquisition by North American of common stock of Pacific in connection with any stabilization operation in the market for the stock is subject to the provisions of §§ 9(a)(1) and 10.

In support of its request to conduct stabilizing operations, North American urges that the knowledge on the part of the public and security dealers of the proposed sale of the 700,000 shares of Pacific common stock may result in a volume of offerings which would unjustifiably depress the market of the stock and adversely affect the price which North American would receive from the prospective underwriting. In order to mitigate these possible adverse consequences authority is sought by North American to purchase such number of shares as it may deem necessary or appropriate during the period from 10 A.M. of the day on which proposals are opened to the time of the opening of such proposals later in that day.

We conclude that stabilization of the market by North American for the limited period from 10 A.M. to 3 P.M. on the day bids are opened may be permitted, inasmuch as it may serve to facilitate the disposition by North American of a large block of the stock previously ordered divested by this Commission. We therefore find that any acquisitions for the purpose specified have the tendency required by § 10(c)(2) and that no adverse findings are required under that section. Our order to be issued herein will provide, however, that any shares so acquired shall be subject to our divestment order of April 14, 1942, 43 PUR(NS) 257, in the same manner as the shares of common stock of Pacific now held by North American. Our order will also require that North American make available to all prospective bidders, at any time prior to the submission of bids, full details with respect to any stabilizing operations which North American may have conducted including the time of purchases and the number of shares acquired.

Accounting Treatment

[4, 5] North American proposes to credit to its Earned Surplus account any excess of net proceeds over and above $22,287,029, the book amount at which it carries the 700,000 shares Pacific common stock. North American has stated that because of the tax relief which it believes to be available

under §§ 371 and 1808 of the Internal Revenue Code, 15 USCA §§ 371, 1808, no taxable gain on the sale of Pacific common stock will be realized and, accordingly, no reserve for taxes is required in connection with the transaction. However, Earned Surplus will be charged with $3,031,795 representing the aggregate amount of redemption premium payable on the serial preferred stock, 6 per cent series. We observe no basis for requiring alteration of the proposed accounting treatment.

Fees and Expenses

North American estimates the fees and expenses to be paid in connection with the proposed transactions to be as shown below. Such expenses, including out-of-pocket expenses of Pacific arising from the proposed transaction, will be paid by North American, except that the fee of counsel for the underwriters will be paid by the successful bidder.

TABLE V

Registration fee	$2,800
Printing	22,000
Transfer agents and registrars' fees and expenses	4,500
Accountants' fees	3,500
Fees of counsel for North American	
Sullivan & Cromwell, New York	7,500
Chickering & Gregory, California	7,500
Fees of counsel for underwriters	
Cahill, Gordon, Zachry & Reindel, New York	7,500
Orrick, Dahlquist, Neff, Brown & Herrington, California	7,500
Miscellaneous	17,500
Total	$80,300

Since the services of counsel for North American and counsel for the prospective bidders are not as yet complete, we shall reserve jurisdiction over the payment of all legal fees and expenses. In this connection it may be noted that the proposed purchase agreement provides that any reduction in the estimated fee to be paid to counsel for the underwriters shall inure to the benefit of North American.

The remaining fees and expenses enumerated above do not appear unreasonable and we make no adverse findings with respect thereto.

Internal Revenue Code

[6] North American has requested that our order contain the recitals specified by Supplement R of Chap I and § 1808(f) of Chap II of the Internal Revenue Code, as amended, by reciting that the sale by North American of the Pacific common stock and the redemption by North American of its serial preferred stock, 6 per cent series, are necessary or appropriate to effectuate the provisions of § 11(b) of the act. If this request is to be granted, we must find that the proposed transactions are necessary or appropriate to the integration or simplification of The North American Company holding company system. The sale of the 700,000 shares of Pacific common stock by North American and the application of the proceeds thereof to the redemption by North American of its serial preferred stock, 6 per cent series, appears to be an appropriate step in carrying out our order of April 14, 1942, *supra*, requiring North American to divest itself of its interest in Pacific. The request of North American will be granted and our final order will so provide.

North American has requested that the requirement of Rule U–50 providing for 10-day period between the invitation of proposals for the purchases or underwriting of the stock proposed to be sold and the signing of any contract or agreement for its purchase be reduced to a period of six days in order to maintain its time schedule. The request will be granted under the particular circumstances of this case, the Commission finding that a full 10-day period is not necessary or appropriate in the public interest or for the protection of investors or consumers.

An appropriate order will issue.

Commissioner Healy dissenting from that part of the decision relating to stabilization operations by North American.

ORDER

The North American Company, a registered holding company, having filed a declaration and an application, and amendments thereto, pursuant to §§ 6(a), 7, 9, 10, and 12 of the Public Utility Holding Company Act of 1935, 15 USCA §§ 79f(a), 79g, 79i, 79j, 79*l*, regarding (a) the sale by The North American Company, in accordance with the provisions of Rule U–50, of 700,000 shares of common stock of Pacific Gas and Electric Company, (b) the application by The North American Company of the net proceeds of the proposed sale of such stock, together with other treasury funds, to the redemption of its 606,359 outstanding shares of serial preferred stock, 6 per cent series, of the par value of $50 per share, at the redemption price of $55 per share, or an aggregate price of $33,349,745, plus accrued dividends, (c) the proposed modification of its loan agreement, dated August 3, 1943, with the Chase National Bank of the city of New York and certain other banks, and (d) the purchase upon the New York Stock Exchange, and the San Francisco, Los Angeles and Philadelphia Stock Exchanges of such number of shares of the common stock of Pacific Gas and Electric Company as North American may deem appropriate, in order to stabilize the price of such shares on the day fixed by it for the opening of proposals; and having requested that the 10-day minimum period for reception of competitive bids prescribed by Rule U–50 be reduced to a minimum of six days; and

Public hearings having been held after appropriate notice, the Commission having considered the record in this matter to date, and having made and filed its findings and opinion herein:

It is *ordered* that the declaration, as amended, be and the same is hereby permitted to become effective, subject to the conditions prescribed by Rule U–24 and to the further condition that the proposed sale of the common stock of Pacific Gas and Electric Company shall not be consummated until the results of competitive bidding, pursuant to Rule U–50, have been made a matter of record in this proceeding and a further order shall have been entered by the Commission in the light thereof, jurisdiction being reserved for this purpose;

It is *further ordered* that the appli-

cation, as amended, regarding the acquisition by The North American Company of shares of common stock of Pacific Gas and Electric Company on the New York Stock Exchange, and the San Francisco, Los Angeles and Philadelphia Stock Exchanges, for the purpose of stabilizing the market price of such stock from 10 A.M. on the day on which bids are opened to the time of the opening of bids later in that day be and the same is hereby granted, subject to the condition that The North American Company shall make available to all prospective bidders, at any time prior to the submission of bids, full details with respect to any stabilizing operations it may have conducted including the time of purchases and the number of shares acquired, and subject to the further condition that any common stock of Pacific Gas and Electric Company so acquired by The North American Company shall be subject to the provisions of our divestment order of April 14, 1942, 43 PUR(NS) 257, in the same manner as the common shares of Pacific Gas and Electric Company now held by The North American Company;

It is *further ordered* that jurisdiction be and the same is hereby reserved over all legal fees to be incurred in connection with the proposed transactions; and

It is *further ordered* that the 10-day minimum period for reception of bids with respect to the securities proposed to be sold, prescribed by Rule U–50, be and same is hereby reduced to a minimum of six days.

FEDERAL POWER COMMISSION

Re The Montana Power Company

Opinion No. 120–A, Docket No. IT–5825
April 27, 1945

PETITIONS *for rehearing on order prescribing accounting entries under § 301(a) of Federal Power Act; rehearing denied. For original decision, see (1945) 57 PUR(NS) 193.*

Accounting, § 32 — Cost of consolidated properties — Value — Affiliates.

1. Value cannot be accepted instead of actual cost without doing violence to the plain language of the Uniform System of Accounts, which is rooted squarely in the cost concept, and evidence of value in excess of cost of assets transferred to nominally distinct corporations, no matter how closely related, is properly excluded, p. 60.

Accounting, § 6 — Uniform system of accounts — Federal and state control.

2. Congress has recognized in the Federal Power Act the fact that there is a dual system of government, and Congress also, in conferring upon the

Federal Power Commission jurisdiction over the accounts of licensees and public utilities, provided for their uniform treatment, p. 60.

Commissions, § 18 — Duty to make independent conclusions — Federal and state control.

3. The Federal Power Commission, although operating under a dual system of government where both Federal and state Commissions regulate power company accounting, must recognize its responsibility and obligation under the Federal Power Act to arrive at its own independent conclusions in accordance with its own best judgment concerning the facts of record, p. 63.

Accounting, § 6 — Federal and state regulation — Uniform accounts.

Discussion by the Federal Power Commission of the advantages and problems involved in coöperation of Federal and state Commissions with respect to accounting requirements of power companies controlled by both Commissions, p. 60.

By the COMMISSION: On March 29, 1945, counsel for The Montana Power Company and on March 28, 1945, counsel for certain groups of $6 preferred stockholders, as intervenors, filed petitions for rehearing in the above-entitled matter.[1] These petitions and assignments of error are substantially similar in most important respects. In the main, they reiterate arguments of fact and of law which were considered fully by the Commission when it originally acted in this matter by the adoption of Opinion No. 120 and the issuance of the accompanying order of February 13, 1945, 57 PUR(NS) 193. As to the contention that we went beyond and contrary to the record before us, we have reëxamined the record in our review of these allegations and find no basis therefor. Likewise the contention that we failed to give adequate consideration to the claims advanced on behalf of the $6 preferred stockholder groups will scarcely bear scrutiny in the light of the attention given to the position of the holders of this stock.[2]

Aside from certain minor questions of procedure—which are well within the long-established precedents of this and other regulatory agencies, and therefore need not be enumerated and discussed here—the other points raised in the petitions center chiefly around our failure to reach the same conclusions as did the Public Service Commission of Montana on records made concurrently which were in many, but not all, important respects the same before both Commissions. Thus, it is asserted several times in the petitions that this Commission "erred in failing to make findings and to give its opinion substantially in accord with" the views of the Montana Commission as set forth in its opinion and report and order dated December 21, 1944, 56 PUR(NS) 193, which are incorporated in the company's petition. In effect, the position of the Montana Commission is accepted by the peti-

[1] Intervenor, American Power & Light Company, by letter filed March 29, 1945, advised that it "hereby joins in and adopts for itself" the petition for rehearing filed by its subsidiary, The Montana Power Company.

[2] Opinion No. 120, 57 PUR(NS) at pp. 222, 223.

tions as the proper standard of accounting treatment; virtually every departure by this Commission from that standard is assigned as error. This presents a novel situation and, in turn, calls for some further explanation of both the meaning and application of the Uniform System of Accounts and the history of this proceeding.

[1] Careful comparison of the opinion of the Montana Commission and of this Commission's Opinion No. 120, *supra*, makes it abundantly clear that, despite the similarity of the language of the Uniform System of Accounts prescribed by the two Commissions, the respective interpretations of those systems and the philosophy underlying their application to the facts of the instant case are widely divergent. As explained in our original Opinion No. 120,[3] our system of accounts is rooted squarely in the cost concept, and we rejected the evidence of company witnesses who espoused the view that assets should be recorded on the books of account at figures in excess of cost if such assets were transferred at higher "values" to nominally distinct corporations, no matter how closely such corporate entities might be related, dominated, or controlled. Yet, according to its opinion, the Montana Commission has relied heavily upon the testimony of these same witnesses and has accepted their concept of accounting as a device for showing "values," rather than a means of disclosing actual cost. As we have previously pointed out, we cannot accept this theory without doing violence to the plain language of our Uniform System of Accounts, to the interpretation placed upon it in a long line of decisions, both by this Commission and by a large number of state Commissions which have adopted the same language and interpretation, and to what we regard as the clear intent of the Congress.

[2] We are mindful, of course, that ours is a dual system of government and that Congress has clearly recognized this fact in the provisions of the Federal Power Act. We must also accept, however, the further fact that Congress, in conferring upon this Commission jurisdiction over the accounts of "licensees" and "public utilities."[4] provided for their uniform treatment. While Congress provided that "public utilities" should not thereby be relieved from compliance with lawful state accounting requirements, it rejected an amendment which would have created substantially the situation for which the company now contends.

We are aware, too, of the advantages which can flow from the effective coöperation of regulatory agencies. Our Uniform System of Accounts under which this proceeding arose, was developed in collaboration with the Committee on Statistics and Accounts of the National Association of Railroad and Utilities Commissioners, of which association the Montana Commission is a member. That as-

[3] See 57 PUR(NS) particularly pp. 201, 202.

[4] The Montana Power Company is both a "licensee" and a "public utility." It has not questioned the jurisdiction of the Commission. Opinion No. 120, 57 PUR(NS) at p. 195.

sociation has recommended what is commonly regarded as the same system of accounts which, as noted in our main opinion, has been adopted and prescribed, with certain modifications in particular instances, by a large number of state Commissions. In the main, the interpretation and application of these accounting provisions by this Commission and the state regulatory agencies which have adopted them have been coöperative and consistent. As heretofore stated, however, the present situation is in some respects unusual. And, since in effect we are asked to adopt the conclusions of the Montana Commission in lieu of our own analysis of the record, a brief statement of the history of this matter, based on the official records of the Commission, may serve to indicate the reasons for our rejection of this contention.

The company filed its purported reclassification and original cost studies, pursuant to our general orders and regulations, on August 1, 1940. Subsequently our staff made a field examination which disclosed that the company's studies were unsatisfactory in certain important respects. On August 29, 1941, the Montana Commission was invited to participate in this field study on a coöperative basis, but on September 4, 1941, advised that, due to lack of appropriations and staff, it would be unable to do so. During this period, the system of accounts for electric utilities used by the Montana Commission was that which it had prescribed effective January 1, 1913. But, following completion of our staff's field investigation, the Montana Commission, by order of December 17, 1942, prescribed, effective January 1, 1943, the NARUC Uniform System of Accounts for Electric Utilities which, as has been stated, is generally similar to that prescribed by this Commission for "licensees" and "public utilities." This order contained the following specific reservation:

"(4) That the effectiveness of this new system of accounts depends to a certain extent on interpretations, and this Commission reserves the right to interpret this System as it deems proper and does not by this Order either approve or disapprove of any interpretation placed on the accounts hereby prescribed by the National Association of Railroad and Utilities Commissioners, by the Federal Power Commission or by any state Commission; . . . "

On February 5, 1943, the report of our staff on its field examination was transmitted to the company with a request that certain accounting readjustments and dispositions be made, that plans for certain other dispositions be submitted, and that certain additional studies be prepared as recommended therein. Copies of this staff report were furnished to the Montana Commission February 13, 1943. The company submitted its response and revised studies to this Commission on June 9, 1943, and on December 28, 1943, the Commission entered its show-cause order covering the amounts in controversy and setting the matter for hearing in Washington on January 31, 1944. Pursuant to the coöperative agreement between this Commission and the National Associa-

tion of Railroad and Utilities Commissioners, as embodied in our Rules of Practice and Regulations, the order provided for the participation of the Montana Commission in these hearings if desired.

Under date of January 4, 1944, the Montana Commission expressed the view that a hearing before it should be held prior to any hearing before this Commission and advised that it was setting such a hearing for January 20, 1944, the date subsequently being postponed to February 28, 1944. By a petition filed January 10, 1944, the company asked for a transfer of this Commission's hearing to the state of Montana and a continuance thereof to March 20, 1944, or later. After conferences with representatives of the Montana Commission, this Commission, by its orders of January 18 and February 16, 1944, postponed its hearing and provided for concurrent hearings to be held with the Montana Commission in Butte beginning March 13, 1944. The Montana Commission simultaneously issued a similar order.

The orders providing for such hearings contained special provisions, inserted to meet the wishes of the Montana Commission, specifically recognizing the necessity for each Commission to control its own record and to include or exclude such evidence as it might deem appropriate. They also provided that an opportunity for conference would be afforded before the entry of an order by either Commission. Thus it was anticipated that rulings as to the admissibility of evidence might differ and that, while the two Commissions would confer before adopting orders, each would of course have to exercise its own independent judgment in interpreting and applying the Uniform System of Accounts to the facts of record. In the light of these specific provisions which were, as stated above, incorporated in the orders to meet the views of the Montana Commission, it is particularly difficult to understand the references in that Commission's opinion, which is now so heavily relied upon by the company in its assignments of error, to the inclusion and exclusion by our trial examiner of evidence which was excluded or included by the Montana Commission in the concurrent hearing held pursuant to those orders. Furthermore, although the petitions assert that the Montana Commission reached its conclusions on "the same identical evidence" as that before this Commission, this claim is evidently based on the statement made in the opinion of the Montana Commission that it reached its "conclusions based upon the evidence admitted by the examiner for the Federal Power Commission, and there is no instance in which we have reached our conclusions based upon evidence admitted by our Commission but rejected by the examiner for the Federal Power Commission."[5] From examination of the Montana Commission's opinion, however, it would appear that it considered evidence concerning the valuation of hydroelectric sites which was not admitted in our proceeding.

During the hearings—which were held in Butte to meet the convenience of the Montana Commission and the company and extended from March

[5] Opinion of the Montana Commission in Docket No. 3421, 56 PUR(NS) 193, 199.

27 to May 12, 1944, thus making it impracticable for the entire membership of this Commission to be in attendance throughout the proceeding—no testimony was introduced by representatives of the Montana Commission. All the evidence in the case, therefore, was presented either by those supporting the position of the company or by members of our staff.

After the filing of briefs and by agreement between the two Commissions, the matter was argued before the two Commissions sitting together in Washington on November 29, 1944. Counsel for the Montana Commission neither filed briefs nor participated in the oral argument.

Following the argument, the two Commissions met in extended conference in Washington on December 1, 1944, to interchange and discuss views regarding the matters at issue. It developed, however, that the two Commissions approached the problem from fundamentally different points of view, the Montana Commission adhering to a value concept of accounting and this Commission to a cost concept. Therefore it became apparent that it would be impossible for differences to be reconciled and similar conclusions to be reached. On December 2nd, the Montana Commission advised that further conference was not desired. It was understood that each Commission would thereupon proceed to its own decision on its own record independently and without further consultation. On December 21, 1944, 56 PUR(NS) 193, the Montana Commission entered its opinion and report and order in the case before it; on February 13, 1945, 57 PUR(NS) 193, this Commission entered its opinion and order in this proceeding.

We have deemed it necessary and appropriate to supply these factual details concerning the history and development of this case in order to show the earnest effort which this Commission has made to coöperate with the Montana Commission throughout the entire proceeding and to indicate that due consideration has been given by us to the views and conclusions of the Montana Commission regarding the problems involved and the evidence presented, despite the pleadings made in the petitions for rehearing now before us.

We take note also of the rather unusual language appearing at certain places in the opinion of the Montana Commission, and particularly the following:

"We have no hesitancy in finding an arm's length purchase. We believe any contrary finding would be speculative and contrary to the evidence, and unsupportable as an administrative finding. We believe our conclusion on this point will stand any test; *we believe no reasonable man could come to any other possible conclusion.*" [6]

[3] It is difficult to see what purpose is to be served by an expression such as this. In any event, as our opinion and order show, we have come to a different conclusion regarding the very important transaction referred to. While it may be regretted it was impossible for the two Commissions to reach identical determinations in the matters before them, we do not deem this a sufficient reason for either to question the competence or to impugn

[6] 56 PUR(NS) at p. 226; italics supplied.

the motives of the other. We must, however, recognize our responsibility and obligation under the statute to arrive at our own independent conclusions in accordance with our own best judgment concerning the facts of record.

Upon careful consideration of the record in this proceeding, our original Opinion No. 120, 57 PUR(NS) 193, the petitions for rehearing and assignments of error, and the opinion of the Montana Commission incorporated therein, we conclude that good cause for granting the petitions has not been shown and that they should, therefore, be denied. Our order will issue accordingly.

ORDER

Upon consideration of the petition for rehearing filed on March 29, 1945, by The Montana Power Company, which was joined in and adopted for itself by Intervenor American Power & Light Company, and the petition filed on March 28, 1945, by the $6 preferred stockholder intervenors, and upon further consideration of all previous orders in this proceeding, the evidence adduced of record, the briefs and other documents filed, the Opinion No. 120 and the order of February 13, 1945, 57 PUR(NS) 193, and having on this date made and entered its opinion (Opinion No. 120-A printed herewith) on said petitions, which is incorporated by reference as a part hereof;

The Commission *finds* that: The assignments of error do not raise any questions of fact or of law which have not been previously considered by the Commission or warrant abrogation or modification of Opinion No. 120 and the order of February 13, 1945, *supra*, in any respect;

The Commission *orders* that: The applications for rehearing of The Montana Power Company, as joined in by American Power & Light Company, and of the $6 preferred stockholders be and they are hereby denied, *provided, however,* that consideration of The Montana Power Company's petition on behalf of American Power & Light Company and consideration of the petition of the $6 preferred stockholders and the Commission's action thereon shall not be construed as recognition by the Commission that the interests of American Power & Light Company and the $6 preferred stockholders are such that they may be "aggrieved by the order issued by the Commission" within the meaning of § 313 of the Federal Power Act, 16 USCA § 825*l*.

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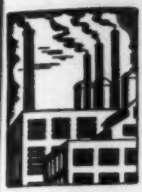

Industrial Progress

Selected information about products, supplies, and services offered by manufacturers. Also announcements of new literature and changes in personnel.

ODT Approves "Products Of Tomorrow Exposition"

AMERICA'S first annual "Products of Tomorrow Exposition" has been approved by Washington for an opening early in 1946. ODT is expected shortly to assign a date for the opening of this great international exposition that will be some time between January first and March first, 1946.

Exhibitors will have few restrictions on the design of their displays. They will be encouraged to go the limit in originality and effectiveness. Many of the exhibitors' displays are expected to set the style for many years to come because they will be encouraged to make effective use of approaches through all of the five senses (the five windows to the mind), sight, sound, touch, taste, and odor, in driving home to the individual the merits of their products.

The "Products of Tomorrow Exposition" will comprise two main divisions, consumer and industrial products, with the addition of others as the demand requires. Plans are complete for the use of 1,000,000 square feet to accommodate every one with a product to introduce.

The "Products of Tomorrow Exposition" will be an annual event to provide a springboard for the introduction of new products and new designs by all industry. The idea of a permanent exhibit was discarded long ago because of its similarity to a museum (no enthusiasm).

The "Products of Tomorrow Exposition" on a permanent and continuing basis will make it possible for many new industries to "design for obsolescence" as the automobile industry has so successfully done for the past twenty years.

A-C Directory of Products and Engineering Literature Ready

THE Allis-Chalmers Manufacturing Company announces a comprehensive directory of products and engineering literature describing the lines of equipment it furnishes to nearly every industry. Major portion of the directory is devoted to a listing of more than 1,600 product types. New products added since the previous directory, such as induction and dielectric heating equipment, are indicated by a star for easy identification.

Engineering literature is arranged according to product discussed with new bulletins also starred. The bulletins offered in this section of the directory are written by engineers who are outstanding authorities in their respective fields. In most cases the literature contains operating data, charts, formulas, and technical information of value to the man who specifies and buys equipment.

A business reply card is included for use as a bulletin order blank, and the location of domestic and foreign sales offices is also given.

Copies of the directory of products and engineering literature are available by request from Allis-Chalmers Manufacturing Company, 565, Milwaukee 1, Wisconsin.

Canadian "CP" Manufacturers Plan Promotional Activities

TO assist Canadian gas utilities and dealers in selling higher grade gas ranges in volume after the war, Canadian "CP" manufacturers laid plans for aggressive promotional activities at the Canadian Gas Association annual convention at Murray bay, Canada, June 19th to 22nd.

Plans for closer utility and dealer coöperation high lighted the 3-day conference.

Chief speaker was Carl Sorby, vice president of Geo. D. Roper Corporation, who summarized the need of higher quality gas ranges to provide consumers with the maximum in cooking results, and pointed out that "instead of worrying about competition and postwar products, let's sell our customer on the superior advantages we already have."

Other speakers from the United States included Jessie McQueen, home service director, American Gas Association; H. Vinton Potter, New Freedom Gas Kitchen promotional director; John W. West, assistant managing director of AGA; H. Leigh Whitelaw, managing director, AGAEM; and James I. Gorton, "CP" promotional director of AGAEM.

Locke Insulator Appointment

C. B. NAIRN, secretary-treasurer of Locke Insulator Corporation, has been appointed assistant to the president of the cor-

poration, handling special assignments, effective July 1, 1945, according to an announcement by R. G. Bellezza, president.

Succeeding Mr. Nairn as secretary-treasurer of the Locke Insulator Corporation is Walter R. Grant formerly with the traveling auditor staff of General Electric Company.

American Optical Offers New Safety Glove

A NEW safety glove made from high-grade chrome-tanned cowhide is announced by the American Optical Company, Southbridge, Massachusetts. Ideal for welding, the new glove can also be worn for hand protection in other heavy-duty operations.

Principal feature of the new glove is its one-piece back construction. Because of this construction there are no seams on the back of the glove to catch sparks or molten metal.

The Gunn style of manufacture reduces the number of seams to an absolute minimum. To give added strength and protection, all vulnerable seams are welted.

B. F. Ilsley Named Manager of G-E Wire and Cable Division

B. F. ILSLEY has been appointed manager of General Electric's wire and cable division, central station divisions, it was announced by W. V. O'Brien, manager of the company's central station divisions.

Following his appointment, Mr. Ilsley announced that the wire and cable organization would be divided into two sections, the cable section in Schenectady and the magnet wire section in Fort Wayne. Sales managers of the two newly created sections are J. S. Overstreet, cable, and J. J. Curtin, magnet wire. Both men were assistant managers of sales for the wire and cable division before the organization changes became effective.

Three Vice Presidents Elected by Westinghouse

ELECTION by the board of directors of three vice presidents to head the treasury, law, and patent departments, and lamp manufacturing and lighting equipment divisions of the Westinghouse Electric Corporation, has been announced by A. W. Robertson, chairman.

They are L. H. Lund, who has been treasurer since 1941; William E. Miller, who had been general attorney in charge of the law and patent department since 1944; and Ralph C. Stuart, in charge of the lamp and lighting divisions.

Mr. Lund and Mr. Miller have their offices in Pittsburgh, Pennsylvania. Mr. Stuart will administer the four plants of the lamp division at Bloomfield, Belleville, and Trenton, New Jersey, and Fairmont, West Virginia, and the lighting division's Cleveland, Ohio, plant from the lamp division headquarters at Bloomfield.

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• This Directory is reserved for engineers, accountants, rate experts, consultants and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, financing, design and construction.

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